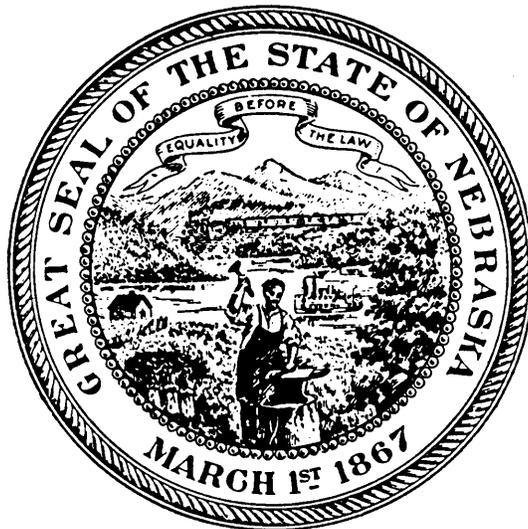


REVISED STATUTES  
OF  
NEBRASKA

**REISSUE OF VOLUME 5A  
2008**

COMPRISING ALL THE STATUTORY LAWS OF A  
GENERAL NATURE IN FORCE AT DATE OF  
PUBLICATION ON THE SUBJECTS ASSIGNED  
TO CHAPTERS 81, ARTICLES 15 TO 36, AND  
CHAPTERS 82 TO 90, INCLUSIVE



Published by the Revisor of Statutes

COPYRIGHT, 2008

by

Joanne M. Pepperl  
Revisor of Statutes

For the benefit of the  
State of Nebraska

## **CERTIFICATE OF AUTHENTICATION**

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 5A of the Revised Statutes of Nebraska, 2008, contains all of the laws set forth in Chapter 81, articles 15 to 36, and Chapters 82 to 90, appearing in Volume 5A, Revised Statutes of Nebraska, 1999, as amended and supplemented by the Ninety-sixth Legislature, Second Session, 2000, through the One Hundredth Legislature, Second Session, 2008, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl  
Revisor of Statutes

Lincoln, Nebraska  
July 1, 2008

Recommended manner of  
citation from  
this volume  
**REISSUE REVISED STATUTES  
OF NEBRASKA, 2008**  
(in full)  
R.R.S.2008  
(abbreviated)

**EDITORIAL STAFF**

Joanne M. Pepperl ..... Revisor of Statutes  
Scott Harrison ..... Assistant Revisor of Statutes  
Marcia McClurg ..... Associate Revisor of Statutes  
Mary H. Fischer ..... Associate Revisor of Statutes  
Diane Carlson ..... Associate Revisor of Statutes  
Neal P. Nelson ..... Senior Legal Counsel  
Krista Miller ..... Legal Counsel  
Joyce Radabaugh ..... Statute Technician  
Mary Anne Linscott ..... Assistant Statute Technician  
Marcia Robinette ..... Assistant Statute Technician  
Mervlyn Krausnick ..... Assistant Statute Technician  
Edith Bottsford ..... Assistant Statute Technician  
Nancy Cherrington ..... Assistant Statute Technician  
Michelle Loseke ..... Assistant Statute Technician  
Jane Plettner-Nielson ..... Assistant Statute Technician



## ENVIRONMENTAL PROTECTION

### ARTICLE 15 ENVIRONMENTAL PROTECTION

#### Cross References

**Cans with disposable tab or grip**, sale prohibited, see section 28-1479.  
**Environmental audits**, see sections 25-21,254 to 25-21,264.  
**Garbage and solid waste disposal facilities**, construction and operation, see sections 14-102, 15-268.01 et seq., 19-2101 to 19-2111, and 23-379 to 23-381.  
**Integrated Solid Waste Management Act**, see section 13-2001.  
**Livestock Waste Management Act**, see section 54-2416.  
**Natural resources districts**, powers, see Chapter 2, article 32.  
**Nebraska Ground Water Management and Protection Act**, see section 46-701.  
**Pesticide Act**, see section 2-2622.  
**Petroleum Release Remedial Action Act**, see section 66-1501.  
**Radiation Control Act**, see section 71-3519.  
**Solid waste disposal areas and facilities**, siting approval from city, village, or county, see sections 13-1701 to 13-1714.

#### (a) ENVIRONMENTAL PROTECTION ACT

Section	
81-1501.	Department; declaration of legislative purpose.
81-1502.	Terms, defined.
81-1503.	Environmental Quality Council; membership; appointment; compensation; Director of Environmental Quality; appointment; oath; duties.
81-1504.	Department; powers; duties.
81-1504.01.	Department of Environmental Quality; reports required; contents.
81-1504.02.	Department; establish telephone line.
81-1504.03.	Grants or loans; restrictions.
81-1505.	Council; rules and regulations; standards of air, land, and water quality.
81-1505.01.	Department of Environmental Quality Cash Fund; created; use; investment.
81-1505.02.	Mineral exploration holes; rules and regulations.
81-1505.03.	Small Business Compliance Advisory Panel; created; members; duties; expenses.
81-1505.04.	Annual emission fee; payment; amount; adjustment; allocation of costs; department; duties; report.
81-1505.05.	Clean Air Title V Cash Fund; created; use; investment.
81-1505.06.	Air quality construction permit; fees; Air Quality Permit Cash Fund; created; use; investment.
81-1506.	Unlawful acts.
81-1507.	Director; violations; hearings; orders.
81-1508.	Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; civil penalties; injunctions.
81-1508.01.	Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; criminal penalties.
81-1508.02.	Unlawful acts; civil penalty.
81-1509.	Appeal; procedure.
81-1510.	Director; voluntary compliance; records.
81-1511.	Department; inspections; search warrants.
81-1512.	Department; emergency powers.
81-1513.	Variances from rules or regulations; notice; conditions for granting; appeal.
81-1514.	Land resources; public policy.
81-1515.	Repealed. Laws 1972, LB 1435, § 16.
81-1516.	Refuse, garbage, and rubbish; disposal; conditions.
81-1517.	Repealed. Laws 1992, LB 1257, § 105.
81-1518.	Repealed. Laws 1992, LB 1257, § 105.
81-1519.	Repealed. Laws 1992, LB 1257, § 105.

## STATE ADMINISTRATIVE DEPARTMENTS

Section	
81-1520.	Repealed. Laws 1992, LB 1257, § 105.
81-1521.	Repealed. Laws 1974, LB 1029, § 10.
81-1521.01.	Transferred to section 81-1521.15.
81-1521.02.	Transferred to section 81-1521.17.
81-1521.03.	Transferred to section 81-1521.20.
81-1521.04.	Transferred to section 81-1521.21.
81-1521.05.	Transferred to section 81-1521.22.
81-1521.06.	Transferred to section 81-1521.23.
81-1521.07.	Repealed. Laws 1987, LB 152, § 12.
81-1521.08.	Hazardous waste; terms, defined.
81-1521.09.	Hazardous waste; commercial hazardous waste management facility; notice of intent to apply for permit; fee; site review committee; director; appoint designee.
81-1521.10.	Hazardous waste; site review committee; membership.
81-1521.11.	Hazardous waste; site review committee; meetings; officers; professional facilitator.
81-1521.12.	Hazardous waste; department; provide staff; applicant; pay expenses.
81-1521.13.	Hazardous waste; site review committee; consider factors; enumerated.
81-1521.14.	Hazardous waste; site review committee; issue report; contents.
81-1521.15.	Commercial hazardous waste management facility; application for permit.
81-1521.16.	Commercial hazardous waste management facility; application; hearing by local governing body.
81-1521.17.	Commercial hazardous waste management facility; notice of hearing; decision by local governing body.
81-1521.18.	Commercial hazardous waste management facility; appeal of decision.
81-1521.19.	Commercial hazardous waste management facility; approval; director; duties.
81-1521.20.	Commercial hazardous waste management facility; publication of notice; additional hearing; permit; issuance; conditions.
81-1521.21.	Commercial hazardous waste management facility; permittee; financial responsibility and insurance.
81-1521.22.	Commercial hazardous waste management facility permit; expiration; renewal.
81-1521.23.	Commercial hazardous waste management facility permit; revocation; when.
81-1522.	Repealed. Laws 1992, LB 1257, § 105.
81-1523.	Accumulation of junk; unlawful.
81-1524.	Accumulation of junk; investigation; removal; notice.
81-1525.	Accumulation of junk; failure to remove; violation; penalty.
81-1526.	Rules and regulations; provisions applicable; exceptions.
81-1527.	Records and information; confidential use.
81-1528.	Act; political subdivision exempt; when; council; rules and regulations.
81-1528.01.	Repealed. Laws 1986, LB 491, § 40.
81-1529.	Act, how construed.
81-1530.	Repealed. Laws 1987, LB 152, § 12.
81-1531.	Repealed. Laws 1974, LB 1029, § 10.
81-1531.01.	Act, how construed.
81-1531.02.	Uranium mining; department; regulatory duties; prohibited methods; enforcement.
81-1532.	Act, how cited.
81-1533.	Repealed. Laws 2000, LB 1234, § 24.
	(b) LITTER REDUCTION AND RECYCLING ACT
81-1534.	Act, how cited.
81-1535.	Legislative declaration; litter and recycling program.
81-1536.	Definitions, where found.
81-1537.	Department, defined.
81-1538.	Council, defined.

## ENVIRONMENTAL PROTECTION

- Section  
81-1539. Fund, defined.  
81-1540. Director, defined.  
81-1541. Litter, defined.  
81-1542. Manufacturer, defined.  
81-1543. Person, defined.  
81-1544. Public place, defined.  
81-1545. Recycling, defined.  
81-1546. Recycling center, defined.  
81-1547. Resource recovery, defined.  
81-1548. Source separation, defined.  
81-1548.01. Wholesaler, defined.  
81-1548.02. Retailer, defined.  
81-1548.03. Tangible personal property, defined.  
81-1548.04. Gross proceeds, defined.  
81-1549. Council; adopt rules and regulations.  
81-1550. Litter prone activities and areas; litter receptacles; required.  
81-1551. Litter receptacles; owner or operator provide and maintain; penalty.  
81-1552. Litter receptacle; abuse; misuse; prohibited; violation; penalty.  
81-1553. Repealed. Laws 2007, LB 79, § 3.  
81-1553.01. Litter problem; surveys; department; grant funds; progress report.  
81-1554. Department; jobs for unemployed; design programs; grant funds.  
81-1555. Department; encourage effective local littering laws.  
81-1556. Act; enforcement; personnel.  
81-1557. Department; littering laws; appropriate provisions posted.  
81-1558. Nebraska Litter Reduction and Recycling Fund; created; use; investment.  
81-1559. Annual litter fee; manufacturer; wholesaler; rate; collection and administration; license; revocation; violation; penalty.  
81-1560. Litter fee; manufacturer; wholesaler; products subject to; enumerated.  
81-1560.01. Annual litter fee; retailer; rate; collection and administration; license; revocation; violation; penalty.  
81-1560.02. Litter fee; retailer; products subject to fee.  
81-1560.03. Litter fee; payment; nonduplication.  
81-1560.04. Litter fee; taxable and nontaxable sales; calculation.  
81-1561. Litter Fee Collection Fund; created; Nebraska Litter Reduction and Recycling Fund; distribution; procedure; purposes.  
81-1562. Annual grants; separate application.  
81-1563. Grant recipients; periodic reports.  
81-1564. Repealed. Laws 1981, LB 253, § 26.  
81-1565. Funds; department; adopt eligibility guidelines for recipients.  
81-1566. Act; termination; extension; considerations.  
81-1566.01. Repealed. Laws 1999, LB 59, § 4.

### (c) HAZARDOUS MATERIALS

- 81-1567. Terms, defined.  
81-1568. Volunteer; limitation on liability.  
81-1569. Limitation on liability; exceptions.  
81-1570. Liability; when.

### (d) LANDFILL AND WASTE DISPOSAL

- 81-1571. Repealed. Laws 1992, LB 1257, § 105.  
81-1572. Transferred to section 13-2026.  
81-1573. Transferred to section 13-2027.  
81-1574. Transferred to section 13-2028.

### (e) STORAGE OF HAZARDOUS SUBSTANCES

- 81-1575. Registration of storage tanks; registration form; fee; State Fire Marshal; rules and regulations.  
81-1576. Terms, defined.  
81-1577. Registration; violation; penalty.  
81-1577.01. Motor vehicle fuel storage tanks; aboveground tanks authorized.

## STATE ADMINISTRATIVE DEPARTMENTS

Section	
	(f) LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT
81-1578.	Act, how cited.
81-1579.	Legislative policy.
81-1579.01.	Offices of commission; legislative intent.
81-1580.	Act; purpose.
81-1581.	Definitions, where found.
81-1582.	Byproduct material, defined.
81-1583.	Closure or site closure and stabilization, defined.
81-1584.	Council, defined.
81-1584.01.	Custodial care, defined.
81-1585.	Decommissioning, defined.
81-1586.	Department, defined.
81-1586.01.	Developer, defined.
81-1587.	Director, defined.
81-1588.	Disposal, defined.
81-1589.	High-level radioactive waste, defined.
81-1590.	Facility, defined.
81-1590.01.	Licensed facility operator, defined.
81-1591.	Low-level radioactive waste, defined.
81-1591.01.	Operational life of the facility, defined.
81-1592.	Person, defined.
81-1593.	Radioactive material, defined.
81-1594.	Source material, defined.
81-1595.	Special nuclear material, defined.
81-1596.	Spent nuclear fuel, defined.
81-1597.	Transuranic waste, defined.
81-1598.	Department; designated agency.
81-1599.	Department; powers and duties.
81-1599.01.	Acceptance of applications for licensure; limitation.
81-1599.02.	Nebraska representatives to commission; appointment.
81-15,100.	Council; disposal of low-level radioactive waste; adopt rules and regulations; considerations.
81-15,101.	License application; contents; transfer; limitation; review, when; department; duties.
81-15,101.01.	Selection of site; local monitoring committee; establishment; members; powers and duties; technical assistance; immunity from liability; Local Site Selection Cash Fund; Local Monitoring Committee Cash Fund; created; use; investment.
81-15,101.02.	Applicant; design and planning requirements.
81-15,101.03.	Decommissioned nuclear reactor; waste; storage or disposal; waste from outside region; acceptance.
81-15,101.04.	Class C low-level radioactive waste; storage; disposal; requirements.
81-15,101.05.	Mixed waste; requirements.
81-15,102.	Disposal site; acquisition or acceptance; construction contracts; conditions; use; notice required; contract for management; management; remedial cleanup costs.
81-15,102.01.	Property near facility; loss of value; compensation authorized; procedure.
81-15,102.02.	Department; testing of water and agricultural products.
81-15,102.03.	Developer; provide emergency training and equipment.
81-15,103.	Council; financial requirements; adopt rules and regulations; remedial cleanup costs; Radiation Site Closure and Reclamation Fund; Radiation Custodial Care Fund; created; use; investment; agreement with Department of Health and Human Services.
81-15,104.	Fees or surcharges for services; special assessment; failure to pay; effect; Low-Level Radioactive Waste Cash Fund; created; investment.
81-15,104.01.	Council; designated as rate-review agency.
81-15,105.	Inconsistent ordinances, resolutions, or regulations; superseded.
81-15,105.01.	Acceptance of waste by facility; when.

## ENVIRONMENTAL PROTECTION

- Section  
81-15,106. License; term; review; revocation; denial; hearing; closure of facility.  
81-15,107. License application; notice; hearing; environmental impact analysis required; appeal.  
81-15,108. Emergency order; hearing.  
81-15,109. Violations of act; action to enjoin.  
81-15,110. Disposal of low-level radioactive waste; license required.  
81-15,111. Violation; criminal penalty.  
81-15,112. Violation; civil penalty; procedure; appeal.  
81-15,112.01. Strict liability in tort; when.  
81-15,112.02. Repealed. Laws 1995, LB 15, § 6.  
81-15,113. Contribution to Central Interstate Low-Level Radioactive Waste Compact Commission's budget; how paid.  
81-15,113.01. Community Improvements Cash Fund; created; surcharge; distribution; allocation; investment; legislative study.  
81-15,113.02. Generator; failure to fulfill responsibilities; effect.  
81-15,114. Violation of Central Interstate Low-Level Radioactive Waste Compact; civil penalty.  
81-15,115. Violation of Central Interstate Low-Level Radioactive Waste Compact; action to enjoin; performance compelled.  
81-15,116. Violation of Central Interstate Low-Level Radioactive Waste Compact; Attorney General; duties.
- (g) PETROLEUM PRODUCTS AND HAZARDOUS SUBSTANCES STORAGE AND HANDLING
- 81-15,117. Act, how cited.  
81-15,118. Legislative findings.  
81-15,119. Terms, defined.  
81-15,120. Farm or residential tank; heating oil storage tank; registration; when required; fee; Petroleum Products and Hazardous Substances Storage and Handling Fund; created; use; investment.  
81-15,121. Tanks; permit; when required; fees; application; Underground Storage Tank Fund; created; investment.  
81-15,122. Denial of permit; procedures; appeal.  
81-15,123. State Fire Marshal; rules and regulations; considerations; requirements.  
81-15,124. Release of regulated substance; Department of Environmental Quality; State Fire Marshal; powers and duties; remedial action plan.  
81-15,124.01. Environmental Quality Council; rules and regulations.  
81-15,124.02. Access to property.  
81-15,124.03. Remedial action plan; considerations.  
81-15,124.04. Risk-based corrective action; department provide briefing.  
81-15,124.05. Remedial action plan; certificate of completion; form; effect.  
81-15,124.06. Remedial action plan; certificate of completion; immunity.  
81-15,124.07. Remedial action plan; participation; effect.  
81-15,125. Violation; penalty.  
81-15,126. Violation; action to enjoin.  
81-15,127. Notice of registration requirements; duty to provide.
- (h) WASTEWATER TREATMENT OPERATOR CERTIFICATION ACT
- 81-15,128. Act, how cited.  
81-15,129. Terms, defined.  
81-15,130. Council; adopt rules and regulations; contents.  
81-15,131. Director; powers and duties.  
81-15,132. Operator certification without examination; recommended by governing body or owner.  
81-15,133. Operator certification without examination; holder of certificate of competency.  
81-15,134. Wastewater treatment facilities; supervision required; exceptions.  
81-15,135. Temporary certificate.  
81-15,136. Certificate; revoke, suspend, or refuse; grounds.  
81-15,137. Hearings; procedures applicable.

## STATE ADMINISTRATIVE DEPARTMENTS

### Section

- 81-15,138. Certificate; term; renewal.
- 81-15,139. Certification required; when.
- 81-15,140. Reciprocal certification agreements; director; duties.
- 81-15,141. Violation; penalty.
- 81-15,142. Appeal.
- 81-15,143. Wastewater Treatment Operator Certification Cash Fund; created; use; investment.

#### (i) MOTOR VEHICLE EXHAUST EMISSIONS

- 81-15,144. Repealed. Laws 1993, LB 3, § 74.
- 81-15,145. Repealed. Laws 1993, LB 3, § 74.

#### (j) SOLID WASTE DISPOSAL SITES

- 81-15,146. Repealed. Laws 1993, LB 3, § 74.

#### (k) WASTEWATER TREATMENT FACILITIES CONSTRUCTION ASSISTANCE ACT

- 81-15,147. Act, how cited.
- 81-15,148. Legislative findings.
- 81-15,149. Terms, defined.
- 81-15,150. Federal grants; director; powers.
- 81-15,151. Wastewater Treatment Facilities Construction Loan Fund; transfers authorized; Construction Administration Fund; created; use; investment.
- 81-15,151.01. Obligation to repay loan; effect.
- 81-15,151.02. Pledge of fund or assets; effect.
- 81-15,152. Council; powers and duties.
- 81-15,153. Department; powers and duties.
- 81-15,154. Categories of loan eligibility; eligible items.
- 81-15,155. Loans to municipalities or counties; conditions.
- 81-15,156. Loan terms.
- 81-15,157. Loans; procedures for granting.
- 81-15,158. Municipality or county; failure to make payment; effect.

#### (l) WASTE REDUCTION AND RECYCLING

- 81-15,158.01. Act, how cited.
- 81-15,159. Legislative findings and intent; state purchases; preference requirements.
- 81-15,159.01. Repealed. Laws 2003, LB 143, § 15.
- 81-15,159.02. Terms, defined.
- 81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.
- 81-15,161. Waste Reduction and Recycling Incentive Fund; grants; application; contents; director and council; duties; rules and regulations.
- 81-15,161.01. Repealed. Laws 2003, LB 143, § 15.
- 81-15,162. Fees on tires; collection; disbursement.
- 81-15,162.01. Repealed. Laws 2003, LB 143, § 15.
- 81-15,162.02. Repealed. Laws 2003, LB 143, § 15.
- 81-15,162.03. Repealed. Laws 1997, LB 495, § 16.
- 81-15,162.04. Repealed. Laws 1997, LB 495, § 16.
- 81-15,162.05. Repealed. Laws 1997, LB 495, § 16.
- 81-15,162.06. Repealed. Laws 1997, LB 495, § 16.
- 81-15,162.07. Grant recipients; reports required.
- 81-15,162.08. Repealed. Laws 2003, LB 143, § 15.
- 81-15,163. Annual waste reduction and recycling fee; amount; collection.
- 81-15,164. Collection of fees; manner.
- 81-15,165. Tax Commissioner; collection fee; Waste Reduction and Recycling Incentive Fees Collection Fund; created; investment.

#### (m) SOLID WASTE MANAGEMENT PLAN

- 81-15,166. Comprehensive plan; department; duties; legislative intent; Environmental Quality Council; duties.

## ENVIRONMENTAL PROTECTION

### Section

#### (n) NEBRASKA ENVIRONMENTAL TRUST ACT

- 81-15,167. Act, how cited.
- 81-15,168. Legislative intent.
- 81-15,169. Terms, defined.
- 81-15,170. Nebraska Environmental Trust Board; created; membership; qualifications; executive director.
- 81-15,170.01. Board members; conflict of interest; treatment.
- 81-15,171. Board members; terms; vacancy; expenses.
- 81-15,172. Board; officers; meetings.
- 81-15,173. Board; powers and duties.
- 81-15,174. Nebraska Environmental Trust Fund; created; use; investment.
- 81-15,174.01. Nebraska Environmental Endowment Fund; created; use; investment.
- 81-15,175. Fund allocations; board; powers and duties.
- 81-15,176. Environmental categories of projects; board; establish grant criteria.

#### (o) SOLID WASTE LANDFILL CLOSURE ASSISTANCE FUND

- 81-15,177. Solid Waste Landfill Closure Assistance Fund; established; use; investment; council; grants; duties.
- 81-15,177.01. Solid Waste Landfill Closure Assistance Fund; applicant, defined.
- 81-15,178. Funding from Solid Waste Landfill Closure Assistance Fund; applicant; requirements.
- 81-15,179. Application for funds; department; powers and duties.

#### (p) SUPERFUND COST SHARE CASH FUND

- 81-15,180. Superfund Cost Share Cash Fund; created; use; investment.

#### (q) REMEDIAL ACTION PLAN MONITORING ACT

- 81-15,181. Act, how cited.
- 81-15,182. Terms, defined.
- 81-15,183. Remedial Action Plan Monitoring Fund; created; use; investment.
- 81-15,184. Remedial action plan; application for monitoring; requirements; fees; department; duties.
- 81-15,185. Department of Environmental Quality; remedial action plan; approval or disapproval; notification.
- 81-15,185.01. Remedial action plan; notice; hearing.
- 81-15,185.02. Remedial action plan; termination; notification.
- 81-15,185.03. Remedial action plan; completion; duties; enforceability.
- 81-15,186. Department of Environmental Quality; issuance of letter; contents.
- 81-15,186.01. Rules and regulations.
- 81-15,187. Act, how construed; indemnification.
- 81-15,188. Act; supplemental to other laws; how construed.

#### (r) TECHNICAL ADVISORY COMMITTEE

- 81-15,189. Technical advisory committee; members; qualifications; expenses.
- 81-15,190. Technical advisory committee; duties; termination.

#### (s) NEBRASKA EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT

- 81-15,191. Act, how cited.
- 81-15,192. Legislative intent.
- 81-15,193. Definitions, where found.
- 81-15,194. Administrator, defined.
- 81-15,195. Commission, defined.
- 81-15,196. Director, defined.
- 81-15,197. Environment, defined.
- 81-15,198. Extremely hazardous substance, defined.
- 81-15,199. Facility, defined.
- 81-15,200. Governing body, defined.
- 81-15,201. Hazardous chemical, defined.
- 81-15,202. Hazardous substance, defined.
- 81-15,203. Inventory form, defined.

## STATE ADMINISTRATIVE DEPARTMENTS

Section	
81-15,204.	List of chemicals, defined.
81-15,205.	Material safety data sheet, defined.
81-15,206.	Release, defined.
81-15,207.	State Administrator, defined.
81-15,208.	Title III, defined.
81-15,209.	Toxic chemical, defined.
81-15,210.	State Administrator; State Emergency Response Commission; created; members; terms.
81-15,211.	Chairperson; meetings; expenses.
81-15,212.	Commission; duties; emergency planning districts.
81-15,213.	Nebraska Emergency Management Agency; Department of Environmental Quality; duties.
81-15,214.	Nebraska Emergency Planning and Community Right to Know Cash Fund; created; use; investment.
81-15,215.	Local emergency planning committee; members; terms.
81-15,216.	Local emergency planning committee; chairperson; meetings.
81-15,217.	Local emergency planning committee; powers and duties.
81-15,218.	Facility; notifications required.
81-15,219.	Facility emergency coordinator.
81-15,220.	Emergency plan; contents.
81-15,221.	Emergency plan review.
81-15,222.	Release notification.
81-15,223.	Material safety data sheet.
81-15,224.	Tier II inventory form.
81-15,225.	Toxic chemical release form.
81-15,226.	Owner or operator; information to health professionals; confidentiality.
81-15,227.	Exemption for transportation.
81-15,228.	Local law; applicability.
81-15,229.	Inspection of information; publication of notice.
81-15,230.	Violations; civil actions.
81-15,231.	Civil action; jurisdiction.
81-15,232.	Civil action; restriction.
81-15,233.	Court award costs of litigation; attorney's fees.
81-15,234.	Intervention.
81-15,235.	Rules and regulations.

### (t) PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM CONTRACTORS CERTIFICATION AND SYSTEM REGISTRATION ACT

81-15,236.	Act, how cited.
81-15,237.	Purposes of act.
81-15,238.	Definitions, where found.
81-15,239.	Advisory committee, defined.
81-15,240.	Certified professional, defined.
81-15,241.	Council, defined.
81-15,242.	Department, defined.
81-15,243.	Director, defined.
81-15,244.	Private onsite wastewater treatment system, defined.
81-15,245.	Private Onsite Wastewater Treatment System Advisory Committee; created; members; expenses.
81-15,246.	Advisory committee; duties.
81-15,247.	Rules and regulations.
81-15,248.	Private onsite wastewater treatment system; professional required; when; registration; inspection and registration; director; powers; waiver of fees authorized.
81-15,248.01.	Fee schedule.
81-15,249.	Certificate; grounds for discipline.
81-15,250.	Private Onsite Wastewater Treatment System Permit and Approval Cash Fund; created; investment.
81-15,250.01.	Private Onsite Wastewater Treatment System Certification and Registration Cash Fund; created; investment.
81-15,251.	Certified professionals; additional requirements.

Section	
81-15,252.	Act; applicability.
81-15,253.	Violation; penalty.

## (a) ENVIRONMENTAL PROTECTION ACT

**81-1501 Department; declaration of legislative purpose.**

Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

(1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;

(2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and enforce uniformly the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land;

(3) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act; and

(4) To protect human health through environmental enforcement.

**Source:** Laws 1971, LB 939, § 1; Laws 1987, LB 152, § 1; Laws 1992, LB 1257, § 75; Laws 1994, LB 570, § 4; Laws 1998, LB 1209, § 17.

**Cross References**

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

The Environmental Protection Act does not preempt the field of pollution control such that municipalities cannot enact ordinances on the subject of pollution control. *State ex rel. Alma v. Furnas Cty. Farms*, 266 Neb. 558, 667 N.W.2d 512 (2003).

Environmental Protection Act does not divest district courts of subject matter jurisdiction to enjoin proposed solid waste disposal operations alleged to be in violation of county ordinances.

*Omaha Fish and Wildlife Club, Inc. v. Community Refuse, Inc.*, 208 Neb. 110, 302 N.W.2d 379 (1981).

Even in an industrial or rural area, one cannot conduct a business in such a manner as to materially prejudice a neighbor, but before enjoining it perpetually, a court of equity will usually allow the owner to correct or eliminate the cause of the grievance. *Botsch v. Leigh Land Co.*, 195 Neb. 509, 239 N.W.2d 481 (1976).

**81-1502 Terms, defined.**

For purposes of the Environmental Protection Act, unless the context otherwise requires:

(1) Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere;

(2) Air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, property, or the conduct of business;

(3) Chairperson shall mean the chairperson of the Environmental Quality Council and council shall mean the Environmental Quality Council;

(4) Complaint shall mean any charge, however informal, to or by the council, that any person or agency, private or public, is polluting the air, land, or water or is violating the Environmental Protection Act or any rule or regulation of the department in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air, land, or water pollution;

(6) Department shall mean the Department of Environmental Quality, which department is hereby created;

(7) Director shall mean the Director of Environmental Quality, which position is hereby established;

(8) Disposal system shall mean a system for disposing of wastes, including hazardous wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity;

(11) Rule or regulation shall mean any rule or regulation of the department;

(12) Sewerage system shall mean pipelines, conduits, pumping stations, force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water;

(21) Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state;

(22) Point source shall mean any discernible confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction, including a schedule of compliance, established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state;

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities, but solid waste shall not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste;

(28) Manifest shall mean the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft or a dug hole, the depth of which is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy, including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in situ combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes;

(34) Mineral exploration hole shall mean a hole bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas;

(35) Solution mining shall mean the use of an injection well and fluids to promote the extraction of mineral resources;

(36) Uranium shall mean tri-uranium oct-oxide;

(37) Solid waste management facility shall mean a facility as defined in section 13-2010; and

(38) Livestock waste control facility shall have the same meaning as in section 54-2417.

**Source:** Laws 1971, LB 939, § 2; Laws 1972, LB 1435, § 1; Laws 1973, LB 538, § 1; Laws 1980, LB 853, § 1; Laws 1981, LB 216, § 2; Laws 1983, LB 356, § 2; Laws 1984, LB 742, § 1; Laws 1984, LB 1078, § 1; Laws 1986, LB 1008, § 1; Laws 1992, LB 1257, § 76; Laws 1993, LB 121, § 538; Laws 1994, LB 570, § 5; Laws 1998, LB 1209, § 18; Laws 2004, LB 916, § 25.

**81-1503 Environmental Quality Council; membership; appointment; compensation; Director of Environmental Quality; appointment; oath; duties.**

(1)(a) The Environmental Quality Council is hereby created.

(b) Until April 28, 2005, the council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(i) One representative of the food products manufacturing industry;

(ii) One representative of conservation;

(iii) One representative of the agricultural processing industry;

- (iv) One representative of the automotive or petroleum industry;
  - (v) One representative of the chemical industry;
  - (vi) One representative of heavy industry;
  - (vii) One representative of the power generating industry;
  - (viii) One representative of agriculture actively engaged in crop production;
  - (ix) One representative of labor;
  - (x) One professional engineer experienced in control of air and water pollution and solid wastes;
  - (xi) One physician knowledgeable in the health aspects of air, water, and land pollution;
  - (xii) One representative from county government;
  - (xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;
  - (xiv) One representative of the livestock industry; and
  - (xv) One representative of the public at large.
- (c) On and after April 28, 2005, the council shall consist of seventeen members to be appointed by the Governor with the advice and consent of the Legislature as follows:
- (i) One representative of the food products manufacturing industry;
  - (ii) One representative of conservation;
  - (iii) One representative of the agricultural processing industry;
  - (iv) One representative of the automotive or petroleum industry;
  - (v) One representative of the chemical industry;
  - (vi) One representative of heavy industry;
  - (vii) One representative of the power generating industry;
  - (viii) One representative of agriculture actively engaged in crop production;
  - (ix) One representative of labor;
  - (x) One professional engineer experienced in control of air and water pollution and solid wastes;
  - (xi) One physician knowledgeable in the health aspects of air, water, and land pollution;
  - (xii) One representative from county government;
  - (xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;
  - (xiv) One representative of the livestock industry;
  - (xv) One representative of minority populations; and
  - (xvi) One biologist.
- (d)(i) Except as otherwise provided in this subdivision, members of the council serving on April 28, 2005, shall continue to serve on the council as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed. The member representing the public at large shall serve until the member representing minority populations is appointed.

(ii) The Governor shall appoint members pursuant to subdivisions (1)(c)(xv) and (1)(c)(xvi) of this section within ninety days after April 28, 2005.

(2) Members shall serve for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made. As the term of an appointee to the council expires, the succeeding appointee shall be a representative of the same segment of the public as the previous appointee. In the case of appointees to vacancies occurring from unexpired terms, each successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

(3) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office but only after delivering to the member a copy of the charges and affording him or her an opportunity to be publicly heard in person or by counsel, in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file, in the office of the Secretary of State, a complete statement of all charges made against such member and the findings thereon, together with a complete record of the proceedings.

(4) The council shall elect from its members a chairperson and a vice-chairperson, who shall hold office at the pleasure of the council. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson. The director shall serve as secretary of the council and shall keep all records of meetings of and actions taken by the council. He or she shall be promptly advised as to such actions by the chairperson.

(5) The members of the council, while engaged in the performance of their official duties, shall receive a per diem of forty dollars while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The council shall hold at least four meetings, once each calendar quarter, at a time and place fixed by the council and shall keep a record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairperson. Such special meetings must be called by him or her upon receipt of a written request signed by two or more members of the council. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the council by the secretary. A majority of the members of the council shall constitute a quorum.

(7) The council shall submit to the Governor a list of names from which he or she shall appoint the Director of Environmental Quality who shall be experienced in air, water, and land pollution control and who may be otherwise an employee of state government. The director shall be responsible for administration of the department and all standards, rules, and regulations adopted pursuant to Chapter 81, article 15, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act. All such standards, rules, and regulations shall be adopted by the council after consideration of the recommendations of the director. All grants to political subdivisions under the control of the department shall be made by the director in accordance with priorities established by the council. A majority of the members of the council shall constitute a quorum for the transaction of business. The affirmative vote of a

majority of all members of the council shall be necessary for the adoption of standards, rules, and regulations.

(8) Before the director enters upon the duties of his or her office, he or she shall take and subscribe to the constitutional oath of office and shall, in addition thereto, swear and affirm that he or she holds no other public office nor any position under any political committee or party, that he or she has not during the two years immediately prior to his or her appointment received a significant portion of his or her income directly or indirectly from permitholders or applicants for a permit under the Environmental Protection Act, and that he or she will not receive such income during his or her term as director, except that such requirements regarding income prior to the term of office shall not apply to employees of any agency of the State of Nebraska or any political subdivision which may be a permitholder under the Environmental Protection Act. Such oath and affirmation shall be filed with the Secretary of State.

**Source:** Laws 1971, LB 939, § 3; Laws 1972, LB 1435, § 2; Laws 1974, LB 1029, § 1; Laws 1979, LB 321, § 2; Laws 1981, LB 204, § 195; Laws 1983, LB 356, § 3; Laws 1992, LB 1257, § 77; Laws 1998, LB 1209, § 19; Laws 2005, LB 351, § 1.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

For purposes of subsection (7) of this section, a statutorily required public hearing is the transaction of business. Johnson v. Nebraska Environmental Control Council, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

### **81-1504 Department; powers; duties.**

The department shall have and may exercise the following powers and duties:

(1) To exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts;

(2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the air, waters, and land of the state;

(3) To advise and consult, cooperate, and contract with other agencies of the state, the federal government, and other states, with interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of the acts;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air, land, and water pollution and causes and effects, prevention, control, and abatement of such pollution as it may deem advisable and necessary for the discharge of its duties under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock

Waste Management Act, using its own staff or private research organizations under contract;

(6) To collect and disseminate information and conduct educational and training programs relating to air, water, and land pollution and the prevention, control, and abatement of such pollution;

(7) To issue, modify, or revoke orders (a) prohibiting or abating discharges of wastes into the air, waters, or land of the state and (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control, or abate pollution;

(8) To administer state grants to political subdivisions for solid waste disposal facilities and for the construction of sewage treatment works and facilities to dispose of water treatment plant wastes;

(9) To (a) hold such hearings and give notice thereof, (b) issue such subpoenas requiring the attendance of such witnesses and the production of such evidence, (c) administer such oaths, and (d) take such testimony as the director deems necessary, and any of these powers may be exercised on behalf of the director by a hearing officer designated by the director;

(10) To require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, (a) to prevent, control, or abate pollution, (b) for the discharge of wastes into the air, land, or waters of the state, and (c) for the installation, modification, or operation of disposal systems or any parts thereof;

(12) To require proper maintenance and operation of disposal systems;

(13) To exercise all incidental powers necessary to carry out the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, mining and land quality, and solid wastes which shall be administered by full-time salaried bureau, division, or section chiefs and to delegate and assign to each such bureau, division, or section and its officers and employees the duties and powers granted to the department for the enforcement of Chapter 81, article 15, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and the standards, rules, and regulations adopted pursuant thereto;

(15)(a) To require access to existing and available records relating to (i) emissions or discharges which cause or contribute to air, land, or water pollution or (ii) the monitoring of such emissions or discharges; and

(b) To require, for purposes of developing or assisting the development of any regulation or enforcing any of the provisions of the Environmental Protection Act which pertain to hazardous waste, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste, upon request of any officer, employee, or representative of the department, to furnish information relating to such waste and any permit involved. Such

person shall have access at all reasonable times to a copy of all results relating to such waste;

(16) To obtain such scientific, technical, administrative, and operational services including laboratory facilities, by contract or otherwise, as the director deems necessary;

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(18) To encourage local units of government to handle air, land, and water pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor;

(19) To consult with any person proposing to construct, install, or otherwise acquire an air, land, or water contaminant source or a device or system for control of such source, upon request of such person, concerning the efficacy of such device or system or concerning the air, land, or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, rules and regulations in force pursuant to the acts, or any other provision of law;

(20) To require all persons engaged or desiring to engage in operations which result or which may result in air, water, or land pollution to secure a permit prior to installation or operation or continued operation;

(21) To enter and inspect, during reasonable hours, any building or place, except a building designed for and used exclusively for a private residence;

(22) To receive or initiate complaints of air, water, or land pollution, hold hearings in connection with air, water, or land pollution, and institute legal proceedings in the name of the state for the control or prevention of air, water, or land pollution, and for the recovery of penalties, in accordance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(23) To delegate, by contract with governmental subdivisions which have adopted local air, water, or land pollution control programs approved by the council, the enforcement of state-adopted air, water, or land pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions. Prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(24) To conduct tests and take samples of air, water, or land contaminants, fuel, process materials, or any other substance which affects or may affect discharges or emissions of air, water, or land contaminants from any source, giving the owner or operator a receipt for the sample obtained;

(25) To develop and enforce compliance schedules, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution;

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide. Reimbursement of the committee shall be made from state and appropriate federal matching

funds for each assignment of work by the department as provided in sections 81-1174 to 81-1177;

(27) To provide, to the extent determined by the council to be necessary and practicable, for areawide, selective, and periodic inspection and testing of motor vehicles to secure compliance with applicable exhaust emission standards for a fee not to exceed five dollars to offset the cost of inspection;

(28) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, an operational standard, or a combination thereof, adequate to protect the public health from such pollutant or pollutants with an ample margin of safety;

(29) To establish the position of public advocate to be located within the department to assist and educate the public on departmental programs and to carry out all duties of the ombudsman as provided in the Clean Air Act, as amended, 42 U.S.C. 7661f;

(30) Under such conditions as it may prescribe for the review, recommendations, and written approval of the director, to require the submission of such plans, specifications, and other information as it deems necessary to carry out the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act or to carry out the rules and regulations adopted pursuant to the acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska;

(31) To carry out the provisions of the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(32) To consider the risk to human health and safety and to the environment in evaluating and approving plans for remedial action.

**Source:** Laws 1971, LB 939, § 4; Laws 1972, LB 1435, § 3; Laws 1973, LB 254, § 1; Laws 1974, LB 1029, § 2; Laws 1979, LB 342, § 1; Laws 1980, LB 853, § 2; Laws 1981, LB 204, § 196; Laws 1983, LB 356, § 4; Laws 1984, LB 1078, § 2; Laws 1986, LB 217, § 15; Laws 1992, LB 1257, § 78; Laws 1994, LB 570, § 6; Laws 1996, LB 1226, § 13; Laws 1997, LB 622, § 124; Laws 1998, LB 1209, § 20.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

#### **81-1504.01 Department of Environmental Quality; reports required; contents.**

The Department of Environmental Quality shall provide the following information to the Governor and to the Clerk of the Legislature by December 1 of each year:

(1) A report by type of service or aid provided by the use and distribution of federal funds received by the department. The report shall also include user fees, permit fees, license fees, and application fees authorized by the federal Environmental Protection Agency as follows:

(a) Actual expenditure of each grant or authorized fees for the most recently completed state fiscal year, including state matching funds;

(b) Current budget and planned use and distribution of each grant and authorized fees for the current state fiscal year, including state matching funds;

(c) A summary of the projected funding level of each grant and authorized fees and the impact of federal mandates and regulations upon the future use of each grant and authorized fees; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(2) A summary of regulations of the federal Environmental Protection Agency which the department is required to implement and which do not include federal funding assistance and the possible financial impact to the state and political subdivisions;

(3) A report by type of service or aid provided by the use and distribution of state general and cash funds, including user fees, permit fees, license fees, and application fees, to carry out activities that are not funded by federal grants as follows:

(a) Actual expenditure of state funds, by agency sections, for the most recently completed state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(b) Current budget and planned use and distribution of state funds, by agency sections, for the current state fiscal year, including a breakdown of expenditures for personal services, operations, travel, capital outlay, and consulting and contractual services;

(c) A summary of projected program funding needs based upon the statutory requirements and public demand for services and the department's assessment of anticipated needs statewide; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(4) A report regarding staff turnover by job class and the department's assessment of its ability to hire and retain qualified staff considering the state's personnel pay plan;

(5) A report listing the method used by each new or existing licensee, permittee, or other person who is required by the department to establish proof of financial responsibility; and

(6) A report for the previous state fiscal year relating to the purpose of the Nebraska Litter Reduction and Recycling Act and of funds credited to the Nebraska Litter Reduction and Recycling Fund.

**Source:** Laws 1991, LB 528, § 1; Laws 1993, LB 3, § 47; Laws 1993, LB 203, § 1; Laws 1994, LB 1034, § 2; Laws 2003, LB 143, § 9; Laws 2007, LB79, § 1.

**Cross References**

Nebraska Litter Reduction and Recycling Act, see section 81-1534.

**81-1504.02 Department; establish telephone line.**

The department shall establish a telephone line to provide information on the department's programs and requirements and to report complaints and suspected violations of the various environmental statutes and regulations which the department administers, as well as complaints regarding the department's regulation and enforcement activities. The department may charge a fee for the use of such a telephone line.

**Source:** Laws 1998, LB 1209, § 29.

**81-1504.03 Grants or loans; restrictions.**

No disbursements from grants or loans administered pursuant to the Environmental Protection Act shall be made for projects related to tire-derived fuel.

**Source:** Laws 2001, LB 461, § 9.

**81-1505 Council; rules and regulations; standards of air, land, and water quality.**

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

(2) In adopting the classifications of waters and water quality standards, the primary purpose for such classifications and standards shall be to protect the public health and welfare and the council shall give consideration to:

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

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

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

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

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

(3) In adopting effluent limitations or prohibitions, the council shall give consideration to the type, class, or category of discharges and the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable or other waters of the state, including schedules of compliance, best practicable control technology, and best available control technology.

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

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

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

(7) In adopting treatment standards, the council shall give consideration to providing for processes to which wastewater shall be subjected in a publicly owned wastewater treatment works in order to make such wastewater suitable for subsequent use.

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

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

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

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

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

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

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

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

(c) With respect to mineral production wells, the council shall adopt and promulgate rules and regulations which require restoration of air, land, water, and subsurface resources and require mineral production well permit applications to include a restoration plan for the air, land, water, and subsurface resources affected. Such rules and regulations may provide for issuance of a research and development permit which authorizes construction and operation of a pilot plant by the permittee for the purpose of demonstrating the permittee's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

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

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

(10) In adopting livestock waste control regulations, the council shall consider the discharge of livestock wastes into the waters of the state or onto land not owned by the livestock operator, conditions under which permits for such operations may be issued, including design, location, and proper management of such facilities, protection of ground water from such operations, and revocation, modification, or suspension of such permits for cause and all requirements of the Livestock Waste Management Act.

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the Clean Water Act, 33 U.S.C. 1251 et seq., the council shall consider when such permits shall be required and exemptions, application and filing requirements, terms and conditions affecting such permits, notice and public participation, duration and

review of such permits, and monitoring, recording, and reporting under the system.

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

(a) A construction permit program which requires the owner or operator of an air contaminant source to obtain a permit prior to construction. Application fees shall be according to section 81-1505.06;

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

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

(d) Provisions for applications to be on forms provided by the department and to contain information necessary to make a determination on the appropriateness of issuance or denial. The department shall make a completeness determination in a timely fashion and after such determination shall act on the application within time limits set by the council. Applications for operating permits shall include provisions for certification of compliance by the applicant;

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

(f) Classification of air quality control regions;

(g) Standards for air quality that may be established based upon protection of public health and welfare, emission limitations established by the United States Environmental Protection Agency, and maximum achievable control technology standards for sources of toxic air pollutants. For purposes of this subdivision, maximum achievable control technology standards shall mean an emission limit or control technology standard which requires the maximum degree of emission reduction that the council, taking into consideration the cost of achieving such emission reduction, any health and environmental impacts not related to air quality, and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which the standard applies through application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which accomplish one or a combination of the following:

- (i) Reduce the volume of or eliminate emissions of the pollutants through process changes, substitution of materials, or other modifications;
- (ii) Enclose systems or processes to eliminate emissions; or
- (iii) Collect, capture, or treat the pollutants when released from a process, stack, storage, or fugitive emission point;
- (h) Restrictions on open burning and fugitive emissions;
- (i) Provisions for issuance of general operating permits, after public notice, for sources with similar operating conditions and for revoking such general authority to specific permittees;
- (j) Provisions for implementation of any emissions trading programs as defined by the department. Such programs shall be consistent with the Clean Air Act, 42 U.S.C. 7401 et seq., and administered through the operating permit program;
- (k) A provision that operating permits will not be issued if the Environmental Protection Agency objects in a timely manner;
- (l) Provisions for periodic reporting of emissions;
- (m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare;
- (n) Time schedules for compliance;
- (o) Requirements for owner or operator testing and monitoring of emissions;
- (p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and
- (q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04.

(13)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention, safety, security, restricted access, and covering and handling of hazardous liquids and materials. Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

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

In considering closure and postclosure of hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would result in the owner or operator closing his or her facility so as to minimize the need for future maintenance, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, postclosure escape of hazardous waste, hazardous waste constituents, and leachate to the ground water or surface waters, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, waste decomposition to the atmosphere. In considering corrective action for hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would require the owner or operator, or any previous owner or operator with actual knowledge of the presence of hazardous waste at the facility, to undertake corrective action or such other response measures necessary to protect human health or the environment for all releases of hazardous waste or hazardous constituents from any treatment, storage, or disposal facility or any solid waste management unit at such facility regardless of the time at which waste was placed in such unit.

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

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

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

(d) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid waste, developmental and operational plans for solid waste disposal areas, conditions for permitting of solid waste disposal areas, modification, suspension, or revocation of such permits, regulations of operations of disposal areas, including site improvements, fire prevention, ground water protection, safety and restricted access, handling of liquid and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing of accumulations of junk outside of solid waste disposal areas. Such regulations shall in all respects comply with the Environmental Protection Act, the Inte-

grated Solid Waste Management Act, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

(14) In adopting regulations governing discharges or emissions of oil and other hazardous materials into the waters, in the air, or upon the land of the state, the council shall consider the requirements of the Integrated Solid Waste Management Act, methods for prevention of such discharges or emissions, and the responsibility of the discharger or emitter for cleanup, toxicity, degradability, and dispersal characteristics of the substance.

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

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

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

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

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

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

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

(g) Inspections of such compost sites at least semiannually followed by ratings, with a copy of such ratings to be given to the site management. Operations out of compliance with composting regulations, permit conditions, or operational plans shall be given a reasonable time for voluntary compliance, and failure to do so within the specified time shall result in a hearing after notice is given, at which time the owner or operator shall appear and show cause why his or her permit should not be revoked;

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

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

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

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

and the time, date, and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Such notice shall be given in accordance with the Administrative Procedure Act.

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

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

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

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

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

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

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

(iii) An established escrow account; or

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

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

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

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

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

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

**Source:** Laws 1971, LB 939, § 5; Laws 1972, LB 1435, § 4; Laws 1973, LB 538, § 2; Laws 1974, LB 1029, § 3; Laws 1979, LB 342, § 2; Laws 1980, LB 853, § 3; Laws 1981, LB 216, § 3; Laws 1983, LB 356, § 5; Laws 1984, LB 1078, § 3; Laws 1986, LB 1008, § 2; Laws 1992, LB 1257, § 79; Laws 1993, LB 623, § 3; Laws 1994, LB 570, § 7; Laws 1994, LB 1031, § 1; Laws 1997, LB 517, § 25; Laws 1998, LB 1209, § 21; Laws 1999, LB 784, § 1; Laws 2001, LB 126, § 1; Laws 2001, LB 667, § 49; Laws 2004, LB 449, § 1; Laws 2006, LB 872, § 3.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

A city ordinance with a mandatory bond requirement conflicts with subsection (21) of this section, which provides for certain exemptions from the requirement of showing financial responsi-

bility, and is impermissible. State ex rel. Alma v. Furnas Cty. Farms, 266 Neb. 558, 667 N.W.2d 512 (2003).

### **81-1505.01 Department of Environmental Quality Cash Fund; created; use; investment.**

There is hereby created the Department of Environmental Quality Cash Fund which shall be used to pay the expenses of the department. The department shall remit all fees collected pursuant to subsection (9) of section 81-1505 and section 81-1521.09 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1521.09 shall be used to pay the expenses related to the notice of intent for which the fee was paid. Any money in the 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.

**Source:** Laws 1983, LB 356, § 8; Laws 1987, LB 114, § 1; Laws 1992, LB 1257, § 80; Laws 1993, LB 3, § 48; Laws 1994, LB 1066, § 112; Laws 1995, LB 429, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-1505.02 Mineral exploration holes; rules and regulations.**

The council may adopt and promulgate rules and regulations governing mineral exploration holes prior to August 1, 1983, but such rules and regulations shall not be effective until such date.

The council shall adopt and promulgate rules and regulations authorized by the amendments made by Laws 1983, LB 356, to subsection (9) of section 81-1505 within one hundred twenty days of May 26, 1983. All requirements of the Environmental Protection Act shall apply to any permit application regardless of the date of submission, except that the department shall continue to diligently process any application submitted prior to May 26, 1983.

**Source:** Laws 1983, LB 356, § 9.

**81-1505.03 Small Business Compliance Advisory Panel; created; members; duties; expenses.**

(1) There is hereby created the Small Business Compliance Advisory Panel. The panel shall consist of the following:

(a) Two members who are not owners or representatives of owners of small business stationary sources of air emissions selected by the Governor to represent the general public;

(b) Four members selected by the Legislature who are owners or who represent owners of small business stationary sources of air emissions; and

(c) One member selected by the director.

(2) The panel shall be responsible for all requirements of the Clean Air Act, 42 U.S.C. 7401 et seq., as such act existed on January 1, 2004. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The panel shall conduct its meetings in accordance with the Open Meetings Act and shall submit an annual report to the Governor no later than January 1 of each year. The panel shall receive necessary staff support from the department.

**Source:** Laws 1992, LB 1257, § 81; Laws 2004, LB 821, § 31.

Cross References

Open Meetings Act, see section 84-1407.

**81-1505.04 Annual emission fee; payment; amount; adjustment; allocation of costs; department; duties; report.**

(1)(a) The department shall collect an annual emission fee from major sources of air pollution. Each major source shall pay the emission fee for regulated pollutants in the amount of twenty-five dollars per ton per pollutant

or as adjusted pursuant to this section. The fee shall be based upon the amount of emissions of each regulated pollutant as reported or estimated by the source in the previous calendar year, but fees shall not be paid on amounts in excess of four thousand tons per year for any regulated pollutant.

(b) Beginning with calendar year 2001 emissions, fees shall not be paid for a mid-sized electric generation facility on amounts in excess of four hundred tons per year for any regulated pollutant.

(c) For purposes of this section, mid-sized electric generation facility means a facility that:

(i) Uses coal as the primary source of fuel in the facility's largest generation unit;

(ii) Has a name plate generating capacity of between seventy and one hundred fifteen megawatts in the facility's largest generation unit; and

(iii) Is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction.

(2)(a) The emission fee may be increased or decreased annually by the department by the percentage difference between the Consumer Price Index for the most recent year ending before the beginning of such year and the Consumer Price Index for the year 1989 or as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit program. For purposes of this section, Consumer Price Index means the change in the price of goods and services for all urban consumers published by the United States Department of Labor at the close of the twelve-month period ending on August 31 of each year.

(b) For purposes of this section, reasonable direct and indirect costs of developing and administering the air quality permit program, as required under the federal Clean Air Act, as the act existed on May 31, 2001, 42 U.S.C. 7661a through f, include:

(i) Consideration of any associated overhead charges for personnel, equipment, buildings, and vehicles;

(ii) Reviewing and acting on any application for a permit or permit revision;

(iii) Implementing and enforcing the terms of any permit, not including any court costs or other costs associated with any formal enforcement action;

(iv) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;

(v) Preparing generally applicable regulations or guidance;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions;

(viii) Developing and implementing any emissions trading programs as defined by the department; and

(ix) Providing support to sources under the Small Business Compliance Advisory Panel.

(c) The council shall establish procedures for the method of calculation and payment of the emission fee in a manner consistent with this section and shall establish the definition of or a table listing the pollutants which are regulated pollutants and a definition of major source. Such definitions or listing shall

comply with and not be more stringent than the requirements of the federal Clean Air Act, as the act existed on May 31, 2001, 42 U.S.C. 7401 et seq.

(3) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect program costs incurred in the previous fiscal year in carrying out the air quality permit program. The Appropriations Committee of the Legislature shall review such report in its analysis of executive programs in order to verify that revenue generated from emission fees was used solely to offset appropriate and reasonable costs associated with the air quality permit program. The report shall identify costs incurred by the department to administer the permit program for each major source. In addition, the department shall identify costs incurred by primary activity not specific to a major source.

(4) The department shall administer a cost tracking system which shall show costs for each major source and costs for each primary activity that is not specific to a major source. The department shall consult with interested parties regarding identification of primary activities to be tracked by the cost tracking system.

**Source:** Laws 1992, LB 1257, § 82; Laws 1996, LB 634, § 1; Laws 2001, LB 461, § 7; Laws 2005, LB 94, § 1; Laws 2006, LB 872, § 4.

**81-1505.05 Clean Air Title V Cash Fund; created; use; investment.**

The Clean Air Title V Cash Fund is created. The department shall remit all fees collected pursuant to section 81-1505.04 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1505.04 shall be used solely to pay the reasonable direct and indirect costs required to develop and administer the air quality permit program, including expenses of the Small Business Compliance Advisory Panel. Any money in the 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.

**Source:** Laws 1995, LB 429, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-1505.06 Air quality construction permit; fees; Air Quality Permit Cash Fund; created; use; investment.**

(1) Beginning January 1, 2005, each application for an air quality construction permit required by rules and regulations adopted pursuant to subsection (12) of section 81-1505 shall be accompanied by an application fee. If fees are required under more than one subdivision of this subsection, the application shall be accompanied by the one fee which is the highest of the applicable fees. The application fee shall be based on potential to emit, as defined in such rules and regulations, in accordance with the following schedule:

(a) Three thousand dollars for facilities that directly emit or have the potential to emit one hundred tons per year or more of any air pollutant, except hazardous air pollutants;

(b) Three thousand dollars for facilities that directly emit or have the potential to emit ten tons per year or more of any single hazardous air pollutant

or twenty-five tons per year or more of any combination of hazardous air pollutants;

(c) One thousand five hundred dollars for facilities that directly emit or have the potential to emit fifty tons per year or more but less than one hundred tons per year of any air pollutant, except hazardous air pollutants;

(d) One thousand five hundred dollars for facilities that directly emit or have the potential to emit (i) two and one-half tons per year or more but less than ten tons per year of any single hazardous air pollutant or (ii) ten tons per year or more but less than twenty-five tons per year of any combination of hazardous air pollutants;

(e) Two hundred fifty dollars for facilities that directly emit or have the potential to emit less than fifty tons per year of any air pollutant, except hazardous air pollutants; and

(f) Two hundred fifty dollars for facilities that directly emit or have the potential to emit (i) less than two and one-half tons per year of any single hazardous air pollutant and (ii) less than ten tons per year of any combination of hazardous air pollutants.

(2) All application fees collected under this section shall be remitted to the State Treasurer for credit to the Air Quality Permit Cash Fund, which fund is hereby created. The Air Quality Permit Cash Fund shall be used for purposes identified in subsection (12) of section 81-1505. Any money in the 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.

(3) For purposes of this section, (a) air pollutant means particulate matter with a diameter of ten microns or less, sulfur dioxide or sulfur trioxide or any combination of the two, oxides of nitrogen, volatile organic compounds, and carbon monoxide and (b) hazardous air pollutant means any pollutant defined as such in rules and regulations adopted pursuant to subsection (12) of section 81-1505.

**Source:** Laws 2004, LB 449, § 2.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

### 81-1506 Unlawful acts.

(1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or

(b) To discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance. An animal feeding operation is not a nuisance if:

(i) Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;

(ii) It is in compliance with applicable regulations adopted by the council and zoning regulations of the local governing body having jurisdiction; and

(iii) The action is brought by or on behalf of a person whose date of lawful possession of the land claimed to be affected by an animal feeding operation is subsequent to the issuance of an appropriate permit by the department for such operation or is subsequent to the operation of the feedlot and an onsite inspection by the department is made, before or after filing of the suit, and the inspection reveals that no permit is required for such operation.

(2) It shall be unlawful for any person to:

(a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505;

(b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department;

(c) Increase in volume or strength any waste in excess of permitted discharges specified under any existing permit;

(d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized; or

(e) Construct or use any new outlet for the discharge or emission of any wastes into the air, waters, or land of the state without the necessary permit.

(3) It shall be unlawful for any person to:

(a) Construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts;

(b) Violate any term or condition of a solid waste management facility permit;

(c) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Integrated Solid Waste Management Act; or

(d) After October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.

(4) It shall be unlawful to:

(a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505;

(b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or

(c) Violate any emission limit or air quality standard established by the council.

(5) It shall be unlawful for any person to:

(a) Construct or operate an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts;

(b) Violate any provision of the Livestock Waste Management Act;

(c) Violate any term or condition of an animal feeding operation permit; or

(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.

(6) Nothing in this section shall be construed to authorize the department to specify the type, design, method of installation, or type of construction of any equipment of manufacturing processes.

**Source:** Laws 1971, LB 939, § 6; Laws 1972, LB 1435, § 5; Laws 1974, LB 1029, § 4; Laws 1977, LB 132, § 1; Laws 1980, LB 915, § 1; Laws 1983, LB 356, § 6; Laws 1992, LB 1257, § 83; Laws 1993, LB 623, § 4; Laws 1994, LB 570, § 8; Laws 1998, LB 1209, § 22; Laws 2004, LB 916, § 26.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

Even in an industrial or rural area, one cannot conduct a business in such a manner as to materially prejudice a neighbor, but before enjoining it perpetually, a court of equity will usually allow the owner to correct or eliminate the cause of the grievance. *Botsch v. Leigh Land Co.*, 195 Neb. 509, 239 N.W.2d 481 (1976).

#### **81-1507 Director; violations; hearings; orders.**

(1) Whenever the director has reason to believe that a violation of any provision of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation pursuant to such acts, or any order of the department has occurred, he or she may cause a written complaint to be served upon the alleged violator or violators or he or she may bring a criminal or civil action under section 81-1508.01 or 81-1508.02. The complaint shall specify the provision of the act, rule or regulation, or order alleged to be violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing.

Whenever, on the basis of any information, the director determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility authorized to operate under the Environmental Protection Act or from a facility subject to hazardous waste management regulations adopted and promulgated under the act, the director may issue an order requiring the owner or operator to monitor, investigate, and undertake corrective action or such other response at the facility or beyond the facility

boundary where necessary to protect human health and the environment. In the case of any facility or site not in operation at the time a determination is made to require corrective action, if the director finds that the owner could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the site, the director may issue an order requiring any previous owner or operator who could reasonably be expected to have actual knowledge to carry out the necessary monitoring, investigation, and corrective action.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of the acts and shall give written notice of such order to the alleged violator and to such other persons who appear at the hearing and make written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the courts as provided in section 81-1509 within thirty days after notice has been sent to the parties.

(3) Any person who is denied a permit by the director or who has such permit revoked or modified shall be afforded an opportunity for a fair hearing as provided in subsection (2) of this section in connection therewith upon written application to the director within thirty days after receipt of notice from the director of such denial, revocation, or modification. On the basis of such hearing the director shall affirm, modify, or revoke his or her previous determination.

(4) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(5) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby in a manner provided for service of a summons in a civil action. Proof of service shall be filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

(6) The hearings provided for in this section may be conducted by the director or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. Witnesses who are subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court therefor, furnish a certified transcript of the whole or any part of the stenographer's notes to any party to the action requiring and requesting the same.

**Source:** Laws 1971, LB 939, § 7; Laws 1972, LB 1435, § 6; Laws 1974, LB 1029, § 5; Laws 1981, LB 204, § 197; Laws 1983, LB 447, § 99; Laws 1987, LB 152, § 2; Laws 1992, LB 1257, § 84; Laws 1998, LB 1209, § 23; Laws 1999, LB 784, § 2; Laws 1999, LB 789, § 1.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2401.

The Director of Environmental Quality is not required to issue a complaint under this section for each and every possible violation of the Environmental Protection Act, but if the director decides to pursue enforcement of a violation, then the director is

required to issue a complaint meeting the requirements of this section. *State ex rel. Wood v. Fisher Foods, Ltd.*, 254 Neb. 982, 581 N.W.2d 409 (1998).

### **81-1508 Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; civil penalties; injunctions.**

(1) Any person who violates any of the provisions of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, fails to perform any duty imposed by either act or any rule or regulation issued thereunder, or violates any order or determination of the director promulgated pursuant to either act and causes the death of fish or other wildlife shall, in addition to the penalties provided in sections 81-1508.01 and 81-1508.02, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock waters with fish or replenish such wildlife as determined by the director after consultation with the Game and Parks Commission. Such amount may be recovered by the director on behalf of the state in a civil action brought in the district court of the county in which such violation or failure to perform the duty imposed occurred.

(2) Except as provided for in subsection (3) of this section for the handling, storage, treatment, transportation, or disposal of solid or hazardous waste, in addition to the penalties provided by this section and sections 81-1508.01 and

81-1508.02, the director, whenever he or she has reason to believe that any person, firm, or corporation is violating or threatening to violate any provision of the acts, any rule or regulation adopted and promulgated thereunder, or any order of the director, may petition the district court for an injunction. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the acts.

(3) Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to the health of humans or animals or to the environment, the director may petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts, to stop such handling, storage, treatment, transportation, or disposal, and to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act.

**Source:** Laws 1971, LB 939, § 8; Laws 1972, LB 1435, § 7; Laws 1973, LB 538, § 3; Laws 1979, LB 342, § 3; Laws 1981, LB 216, § 4; Laws 1983, LB 356, § 7; Laws 1984, LB 1078, § 4; Laws 1987, LB 565, § 1; Laws 1991, LB 413, § 1; Laws 1992, LB 1257, § 85; Laws 1994, LB 570, § 9; Laws 1998, LB 1209, § 24.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

A showing of pollution is not a requisite to recovery of a civil penalty under subsection (1)(c) of this section. In an action for civil penalties under subsection (1)(c) of this section, the size of

the operation must be considered in determining the amount, if any, of a penalty. *State ex rel. Grams v. Beach*, 243 Neb. 126, 498 N.W.2d 83 (1993).

### **81-1508.01 Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; criminal penalties.**

(1) Any person who violates the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class IV felony:

(a) Violating any water pollution control law, rule, or regulation adopted pursuant to the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or any permit or permit condition or limitation or failing to obtain a permit as required by the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act;

(b) Violating any air pollution control law, rule, regulation, permit, license, or permit or license condition or limitation;

(c) Violating any hazardous waste control law, rule, regulation, permit, license, or permit or license condition or limitation;

(d) Violating any mineral production, mineral exploration, or injection control law, rule, regulation, permit, license, or permit or license condition or limitation;

(e) Making any false statement, representation, or certification in any application, label, manifest, record, report, plan, or other document required to be filed or maintained by the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(f) Falsifying, tampering with, or rendering inaccurate any monitoring device or method used or required for compliance with any permit or license or the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts; or

(g) Transporting hazardous waste to an unpermitted facility.

(2) Any person who violates the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class I misdemeanor:

(a) Violating any solid waste control law, rule, regulation, permit, license, or permit or license condition or limitation; or

(b) Violating any livestock waste control law, rule, regulation, permit, license, or permit or license condition or limitation.

(3) Any person who knowingly and willfully violates any other provision of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or any rule or regulation adopted and promulgated pursuant to such acts shall be guilty of a Class III misdemeanor.

(4) Each violation under this section shall be actionable. In case of a continuing violation, each day shall constitute a separate offense. Any person who knowingly and willfully violates this section shall be subject to personal liability under this section. In assessing the amount of any fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

**Source:** Laws 1994, LB 570, § 10; Laws 1998, LB 1209, § 25.

**Cross References**

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

**81-1508.02 Unlawful acts; civil penalty.**

(1) It shall be unlawful for any person:

(a) To refuse the right of entry and inspection to any authorized representative of the department when the representative is acting under the provisions of a permit issued by the department;

(b) To violate any air, water, or land quality standards, any emission or effluent standards or limitations, any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(c) To make any false statement, representation, or certification in any application, label, record, report, plan, or other document required to be filed or maintained by such acts, rules, or regulations;

(d) To falsify, tamper with, or render inaccurate any monitoring device or method used or required for compliance with a permit or license or such acts, rules, or regulations; or

(e) To violate any other provision of or fail to perform any other duty imposed by such acts, rules, or regulations.

(2) Each violation of this section or of section 81-1506 shall subject a person to a civil penalty of no more than ten thousand dollars per day. In case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

**Source:** Laws 1994, LB 570, § 11; Laws 1998, LB 1209, § 26; Laws 1999, LB 789, § 2.

#### Cross References

**Integrated Solid Waste Management Act**, see section 13-2001.  
**Livestock Waste Management Act**, see section 54-2401.

Before seeking the imposition of a civil penalty under this section, the Director of Environmental Quality must first issue a complaint satisfying the requirements of section 81-1507. State ex rel. Wood v. Fisher Foods, Ltd., 254 Neb. 982, 581 N.W.2d 409 (1998).

### **81-1509 Appeal; procedure.**

An appeal may be taken from any final decision of the director, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1971, LB 939, § 9; Laws 1972, LB 1435, § 8; Laws 1974, LB 1029, § 6; Laws 1979, LB 321, § 3; Laws 1988, LB 352, § 174.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

For the purposes of this section, no final decision has been rendered unless a complaint has first been issued by the Director of Environmental Quality. State ex rel. Wood v. Fisher Foods, Ltd., 254 Neb. 982, 581 N.W.2d 409 (1998).

### **81-1510 Director; voluntary compliance; records.**

(1) The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

(2) The director may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the director may examine and copy any such records or memoranda pertaining to the operation of disposal systems. Copies of such records shall be submitted to the director upon request.

**Source:** Laws 1971, LB 939, § 10; Laws 1972, LB 1435, § 9; Laws 1992, LB 1257, § 86.

### **81-1511 Department; inspections; search warrants.**

Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air, land, or water contaminant source, enter and inspect any property, premise, or place on or at which such a contaminant source is located or being constructed, installed, or established for the purpose of ascertaining the state of compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act and rules and regulations in force pursuant to the acts. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department for the purpose of enabling him or her to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials and warrants. No person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

**Source:** Laws 1971, LB 939, § 11; Laws 1972, LB 1435, § 10; Laws 1987, LB 152, § 3; Laws 1992, LB 1257, § 87; Laws 1998, LB 1209, § 27.

**Cross References**

**Inspection of grain warehouses, department, duties,** see section 88-550.

**Integrated Solid Waste Management Act,** see section 13-2001.

**Livestock Waste Management Act,** see section 54-2416.

**81-1512 Department; emergency powers.**

Nothing in the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration if such power is conferred by statute or constitutional provision or inheres in the office.

**Source:** Laws 1971, LB 939, § 12; Laws 1987, LB 152, § 4; Laws 1992, LB 1257, § 88; Laws 1998, LB 1209, § 28.

**Cross References**

**Integrated Solid Waste Management Act,** see section 13-2001.

**Livestock Waste Management Act,** see section 54-2416.

**81-1513 Variances from rules or regulations; notice; conditions for granting; appeal.**

(1) Any person who owns or is in control of any plant, building structure, process, or equipment may apply to the director for a variance from rules or regulations. The director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety 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. In making such findings the director shall give due consideration to all the facts and circumstances bearing

upon the reasonableness of the emissions or discharges involved including, but not limited to:

(a) The character and degree of injury to or interference with the health and physical property of the people;

(b) The social and economic value of the source of the air, water, or land pollution;

(c) The question of priority of location in the area involved; and

(d) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source.

(2) No variance shall be granted until the director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. Before any variance is granted, the director shall give public notice of an application for such variance immediately upon receipt of such application and in accordance with the rules and regulations of the department. The notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the proposed variance is located.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section, for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the director may prescribe;

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable; and

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivision (a) or (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the director on account of the variance, no renewal thereof shall be granted unless the director finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal and before approving the renewal application, the director shall give public notice of such application in accordance with rules and regulations of the department. The public notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the variance is located.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the director. The granting or denial of a variance or a renewal shall be by final order of the director. Any person adversely affected by such an order may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of section 81-1507 to any person or his or her property.

(7) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

**Source:** Laws 1971, LB 939, § 13; Laws 1972, LB 1435, § 11; Laws 1974, LB 1029, § 7; Laws 1988, LB 352, § 175; Laws 2006, LB 975, § 19.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-1514 Land resources; public policy.**

It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.

**Source:** Laws 1971, LB 939, § 14.

**81-1515 Repealed. Laws 1972, LB 1435, § 16.**

**81-1516 Refuse, garbage, and rubbish; disposal; conditions.**

No person shall dispose of any refuse, garbage, or rubbish at any place except a disposal area for which a permit has been issued as provided by the Environmental Protection Act or, on and after October 1, 1993, in a facility for which a permit has been issued under the Integrated Solid Waste Management Act. Nothing in either act and no act of the director shall usurp the legal right of a local governing body to develop and enforce local ordinances, codes, or rules and regulations on solid waste disposal equal to or more stringent than the provisions of the acts as necessary to protect the public health and welfare and the environment, and the provisions of the acts shall not relieve the applicant from obtaining a permit from a local governing body when required or relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes, or rules and regulations not in conflict with the provisions of the acts.

**Source:** Laws 1971, LB 939, § 16; Laws 1987, LB 152, § 5; Laws 1992, LB 1257, § 89.

## Cross References

**Garbage and solid waste disposal facilities**, construction and operation by cities of the first and second classes and villages, see sections 19-2101 to 19-2111.

**Integrated Solid Waste Management Act**, see section 13-2001.

**Solid waste disposal areas and facilities**, siting approval from city, village, or county, see sections 13-1701 to 13-1714.

**81-1517 Repealed. Laws 1992, LB 1257, § 105.**

**81-1518 Repealed. Laws 1992, LB 1257, § 105.**

**81-1519 Repealed. Laws 1992, LB 1257, § 105.**

**81-1520 Repealed. Laws 1992, LB 1257, § 105.**

**81-1521 Repealed. Laws 1974, LB 1029, § 10.**

**81-1521.01 Transferred to section 81-1521.15.**

**81-1521.02 Transferred to section 81-1521.17.**

**81-1521.03 Transferred to section 81-1521.20.**

**81-1521.04 Transferred to section 81-1521.21.**

**81-1521.05 Transferred to section 81-1521.22.**

**81-1521.06 Transferred to section 81-1521.23.**

**81-1521.07 Repealed. Laws 1987, LB 152, § 12.**

**81-1521.08 Hazardous waste; terms, defined.**

For purposes of sections 81-1521.08 to 81-1521.23, unless the context otherwise requires:

(1) Chief executive officer shall mean the mayor, city manager, or chairperson of the board of trustees of a municipality;

(2) Commercial hazardous waste management facility shall mean a hazardous waste management facility which accepts hazardous waste for treatment, storage, or disposal which is generated by any person other than the person which owns or operates such facility;

(3) Committee shall mean the specific site review committee established in response to a notice of intent filed pursuant to section 81-1521.09;

(4) Hazardous waste management facility shall mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of hazardous waste. A hazardous waste management facility may consist of several treatment, storage, or disposal operational units such as one or more landfills or surface impoundments or any combination of such operational units;

(5) Municipality shall mean an incorporated city or village; and

(6) Other definitions found in section 81-1502 shall apply.

**Source:** Laws 1987, LB 114, § 2.

**81-1521.09 Hazardous waste; commercial hazardous waste management facility; notice of intent to apply for permit; fee; site review committee; director; appoint designee.**

(1) Commencing on June 30, 1988, any person who desires a permit for a commercial hazardous waste management facility shall, at least one hundred eighty days prior to making application therefor, file a notice of intent with the director on a form provided by the director. The notice of intent shall include such information as prescribed by the director and shall be accompanied by a fee established by the department in an amount sufficient, but not in excess of the amount necessary, to pay the department for the direct and indirect costs of processing the notice of intent and to pay the costs and expenses specified in section 81-1521.12. Within fifteen days of receipt of a notice of intent, the director shall notify the appropriate local officials and shall establish a specific site review committee. The purpose of establishing the committee shall be to provide for early public involvement in the consideration of a proposed facility.

(2) The director may appoint a designee to carry out duties assigned to the director related to a notice of intent or an application for a permit except the duty to make the decision required by section 81-1521.19. If the applicant is an individual, the application shall include the applicant's social security number.

**Source:** Laws 1987, LB 114, § 3; Laws 1997, LB 752, § 225.

**81-1521.10 Hazardous waste; site review committee; membership.**

(1) The committee shall consist of twelve members, six of whom shall be local members and six of whom shall be regional members.

(2) The six local members shall be chosen as follows:

(a) If the proposed facility will be located within the zoning jurisdiction of a municipality, the chief executive officer of the municipality shall appoint six members who reside within such zoning jurisdiction;

(b) If the proposed facility will be located in an unincorporated area which is within five miles of the zoning jurisdiction of one or more municipalities, the chief executive officer of each such municipality shall appoint a member who resides within the zoning jurisdiction of the respective municipality and the chairperson of the county board of the county in which the facility would be located shall appoint additional members who reside within five miles of the proposed facility for a total of six members; and

(c) If the proposed facility will be located in an unincorporated area which is more than five miles from the zoning jurisdiction of any municipality, the chairperson of the county board of the county in which the facility would be located shall appoint six members who reside within five miles of the proposed facility.

(3) The six regional members shall be appointed by the director to represent various interests affected by a proposed facility and shall include at least one environmental representative, one academic expert, one industry representative, one community planner, one representative of public interest groups, and one representative of the medical community. The regional members shall be appointed for two-year terms and shall serve whenever a committee is needed during that time. Alternates shall be appointed to serve in case a regional member is unable to do so or is already serving on a committee.

**Source:** Laws 1987, LB 114, § 4.

**81-1521.11 Hazardous waste; site review committee; meetings; officers; professional facilitator.**

The director shall organize a meeting of the committee within twenty-one days of the filing of a notice of intent by an applicant. The director shall serve as temporary chairperson of the committee and shall select as a professional facilitator a person trained in group dynamics and objectivity to handle committee meetings with the public and the applicant. At its first meeting, the committee shall select a chairperson and any other officers it deems necessary and shall adopt procedures for gathering information and preparing a report. The committee shall hold factfinding meetings near the proposed site for the facility. The applicant shall make a technical advisor and other resource people available to the committee.

**Source:** Laws 1987, LB 114, § 5.

**81-1521.12 Hazardous waste; department; provide staff; applicant; pay expenses.**

The department shall provide a secretary and other staff persons to assist the committee. The applicant shall pay the expenses for such clerical and other help and the salary of the professional facilitator, shall pay the costs of printing the committee's report, and shall reimburse the committee members for their mileage expenses at the rate provided in section 81-1176 for state employees. The department shall keep a record of all such costs and expenses and assess the applicant for any amount over the estimated amount on which the fee paid by the applicant was based.

**Source:** Laws 1987, LB 114, § 6.

**81-1521.13 Hazardous waste; site review committee; consider factors; enumerated.**

Factors to be considered by the committee shall include, but not be limited to:

(1) Economic considerations such as whether the facility is needed, profit expectations for the facility, how the facility will be operated, effects on the community, the potential for compensation to the local governing body, and aspects related to closure of the facility;

(2) The function of the facility, including the management processes involved, the wastes to be handled, the relationship to any integrated system or master plan for hazardous waste management, and plans for future expansion;

(3) Considerations related to the technology to be used such as why that process was chosen, plans for quality control, reliability of the technology, and the sequence of steps involved from generation of the wastes to postclosure of the facility;

(4) Characteristics of the site for the facility, the methods for determining the characteristics, and why the site was chosen;

(5) Surface drainage, ground water protection, air emissions, and other factors related to environmental quality;

(6) Transportation considerations such as methods to be used, waste containment during transport, party responsible for transport, timing of arrivals, routing, and response plans in case of spills;

(7) Plans for responses to emergencies and for site security, qualifications and training of personnel, and actions to be taken when there are operating problems; and

(8) Enforcement provisions, including applicable regulations, monitoring plans, who is responsible for enforcement, sequence and timing of possible enforcement, and the ability of governmental agencies to ensure compliance.

**Source:** Laws 1987, LB 114, § 7.

**81-1521.14 Hazardous waste; site review committee; issue report; contents.**

The committee shall issue a report no later than one hundred eighty days from the date the notice of intent is filed, except that the deadline may be extended by mutual agreement between the applicant and the committee. The report shall document the discussion of community concerns raised during review by the committee of the proposed commercial hazardous waste management facility, including identification and discussion of the issues which were resolved, the issues which were not resolved, and the questions which were not answered, including the reasons they were not answered.

The report may also include recommendations on the compensation which the applicant should pay or provide to the local governing body. Any recommendations shall be subject to further negotiations between the applicant and the local governing body.

Copies of the report shall be made available to committee members, the department, the applicant, and the public.

After issuance of its report, the committee shall have no further duties, except that the department may ask the committee to review any changes related to the proposed commercial hazardous waste management facility which are proposed by the applicant and to amend its report if appropriate.

**Source:** Laws 1987, LB 114, § 8.

**81-1521.15 Commercial hazardous waste management facility; application for permit.**

At the conclusion of the process involving the committee, the person desiring a permit for a commercial hazardous waste management facility shall make application therefor to the director on a form provided by the director. The application shall contain the name and residence of the applicant, the location of the proposed facility, and such other information as may be necessary and shall be accompanied by a copy of the committee's report and any written response by the applicant to such report.

**Source:** Laws 1980, LB 853, § 8; R.S.1943, (1981), § 81-1521.01; Laws 1987, LB 114, § 9.

**81-1521.16 Commercial hazardous waste management facility; application; hearing by local governing body.**

If the application for a commercial hazardous waste management facility contains all of the information required by the department, the director shall send a copy of the application, of the committee's report, and of any response by the applicant to the report to the county board of the county if the proposed facility will be located outside the zoning jurisdiction of a city or village or to the city council or board of trustees if it will be located within the zoning jurisdiction of a city or village. A hearing shall be held by the county board, city

council, or board of trustees within forty-five days of receipt of the copy of the application.

**Source:** Laws 1987, LB 114, § 10.

**81-1521.17 Commercial hazardous waste management facility; notice of hearing; decision by local governing body.**

Before the county board, city council, or board of trustees approves or disapproves a proposed commercial hazardous waste management facility, notice shall be given once at least thirty days but not more than forty days before the hearing and a second time at least ten days before the hearing. Such notice shall be given by publication of a notice in a newspaper either published in or having general circulation in the county, city, or village where the proposed facility is to be located and shall state the time and place of hearing, the name of the applicant for a permit, and the exact location of the proposed facility. In deciding whether to approve or disapprove such facility, the county board, city council, or board of trustees shall determine if such facility will be in compliance with its zoning laws or violate any local ordinances or resolutions. The local governing body shall make its decision within one hundred eighty days of receipt of a copy of the application from the director and shall notify the department and the applicant of its action. If the local governing body disapproves the application, it shall specify its reasons for disapproval. If the local governing body disapproves the application, the department may not take further action on the application unless the disapproval is reversed by court order. For purposes of appeal, the decision of the local governing body to disapprove the application shall be deemed a final order.

**Source:** Laws 1980, LB 853, § 9; R.S.1943, (1981), § 81-1521.02; Laws 1987, LB 114, § 11; Laws 1987, LB 152, § 8.

**81-1521.18 Commercial hazardous waste management facility; appeal of decision.**

The disapproval decision made by the local governing body may be appealed to district court. The court may affirm the decision or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the local governing body;
- (3) Made upon unlawful procedure;
- (4) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (5) Arbitrary or capricious.

**Source:** Laws 1987, LB 114, § 12.

**81-1521.19 Commercial hazardous waste management facility; approval; director; duties.**

Following approval action by the local governing body, the director shall determine if the proposed facility complies with the provisions of the Environmental Protection Act and all rules, regulations, and standards promulgated pursuant to such act. The review shall include, but not be limited to, consider-

ation of factors related to air quality, water quality, waste management, and hydrogeology and of the environmental risks and benefits to the vicinity in which the facility would be located. Each person in the department who reviews the application shall prepare and sign a written statement for evaluation by the director who shall decide whether to approve or disapprove the application.

**Source:** Laws 1987, LB 114, § 13.

**81-1521.20 Commercial hazardous waste management facility; publication of notice; additional hearing; permit; issuance; conditions.**

The department shall publish notice of an application for a permit for a commercial hazardous waste management facility, together with the action taken by the local governing body, the director's decision, and whether the permit will be granted or denied, in a legal newspaper either published in or having general circulation in the vicinity affected. A copy of such notice shall also be provided to the applicant. The public may comment or request a public hearing within thirty days after the date such information is made available, and the director may, within his or her discretion, hold a hearing on the granting or denial of the permit if he or she determines that the circumstances justify it.

Prior to issuing the permit, the director shall find that the applicant is a responsible and suitable person to conduct the business and that the proposed facility complies with the provisions specified in section 81-1521.19 and has the requisite approval of the local governing body. Permit conditions established by the department shall supersede any ordinances, resolutions, regulations, or requirements of the local governing body, then or thereafter in effect, which are inconsistent with such conditions.

**Source:** Laws 1980, LB 853, § 10; R.S.1943, (1981), § 81-1521.03; Laws 1987, LB 114, § 14.

**81-1521.21 Commercial hazardous waste management facility; permittee; financial responsibility and insurance.**

As a condition of granting a permit for any commercial hazardous waste management facility, the permittee shall provide proof of financial responsibility pursuant to subdivision (21)(a) of section 81-1505 and liability insurance, including coverage against nonsudden and accidental occurrences, in an amount determined by the director.

**Source:** Laws 1980, LB 853, § 11; Laws 1984, LB 1078, § 6; R.S.Supp.,1986, § 81-1521.04; Laws 1987, LB 114, § 15.

**81-1521.22 Commercial hazardous waste management facility permit; expiration; renewal.**

Permits shall expire five years following the date of issuance but may be renewed if the permittee has complied with the provisions of the Environmental Protection Act and the rules and regulations adopted and promulgated thereunder.

**Source:** Laws 1980, LB 853, § 12; R.S.1943, (1981), § 81-1521.05; Laws 1987, LB 114, § 16; Laws 1987, LB 152, § 9.

**81-1521.23 Commercial hazardous waste management facility permit; revocation; when.**

The director may revoke the permit for a commercial hazardous waste management facility, pursuant to subsection (3) of section 81-1507, if he or she finds that the facility is not being operated in accordance with the Environmental Protection Act and rules and regulations adopted and promulgated thereunder.

**Source:** Laws 1980, LB 853, § 13; R.S.1943, (1981), § 81-1521.06; Laws 1987, LB 114, § 17; Laws 1987, LB 152, § 10.

**81-1522 Repealed. Laws 1992, LB 1257, § 105.****81-1523 Accumulation of junk; unlawful.**

It shall be unlawful for any property owner or person in lawful possession of property to allow the accumulation of junk on property that is not purely agricultural in character to the extent that such accumulation is a potential hazard to health.

**Source:** Laws 1971, LB 939, § 23.

**81-1524 Accumulation of junk; investigation; removal; notice.**

The department of health of a city, or the director, as the case may be, shall have the power to investigate all complaints of violations of section 81-1523 and, if either the department or director finds that the property owner or person in lawful possession of the property has allowed an unlawful accumulation of junk, shall give notice to the owner or person in lawful possession of the property by certified or registered mail to remove the accumulation within thirty days.

**Source:** Laws 1971, LB 939, § 24.

**81-1525 Accumulation of junk; failure to remove; violation; penalty.**

Any property owner or person in lawful possession of property who fails or refuses to remove an accumulation of junk as directed by the director pursuant to section 81-1524 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1971, LB 939, § 25; Laws 1972, LB 1435, § 13; Laws 1977, LB 39, § 305; Laws 2007, LB8, § 1.

**81-1526 Rules and regulations; provisions applicable; exceptions.**

(1) All rules and regulations adopted by the council and all hearings and other proceedings of the director, and judicial review thereof, shall be subject to the provisions of the Administrative Procedure Act.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 81-1507.

(3) Nothing in the Administrative Procedure Act shall be construed to render inapplicable or unenforceable the procedure set forth in section 81-1507. In any case of inconsistency or conflict, the provisions of section 81-1507 shall prevail.

**Source:** Laws 1971, LB 939, § 26; Laws 1974, LB 1029, § 8.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-1527 Records and information; confidential use.**

(1) Any records or other information furnished to or obtained by the department concerning one or more air, water, or land contaminant sources, which records or information, as certified by the owner or operator and determined by the director to relate to methods or processes entitled to protection as trade secrets of such owner or operator, shall be only for the confidential use of the department in the administration of the Environmental Protection Act and the Integrated Solid Waste Management Act unless such owner or operator expressly agrees to their publication or availability to the general public, except that emission data obtained under the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., or effluent data, permit applications, draft permits, or permits as issued, all under the National Pollutant Discharge Elimination System, pursuant to the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended, shall be available to the public during business hours. Any information to be accorded confidential status in a national pollutant discharge elimination system form shall be forwarded to the Regional Administrator of the Environmental Protection Agency for concurrence with the director's determination of such status. Nothing in this section shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of water or the land or the outdoor atmosphere as long as such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(2) The director shall permit the Administrator or Regional Administrator of the Environmental Protection Agency or his or her delegates to inspect the confidential records of the department concerning a given source.

**Source:** Laws 1971, LB 939, § 27; Laws 1972, LB 1435, § 14; Laws 1974, LB 1029, § 9; Laws 1984, LB 1078, § 7; Laws 1992, LB 1257, § 90.

## Cross References

Integrated Solid Waste Management Act, see section 13-2001.

**81-1528 Act; political subdivision exempt; when; council; rules and regulations.**

(1) The Environmental Protection Act shall not apply in any political subdivision which provides for the control of air, water, or land pollution by resolution, ordinance, or regulation not inconsistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act, except that no such resolution, ordinance, or regulation shall become effective until a certificate of exemption has been issued by the director. Such certificate of exemption shall be available for inspection in the office of the county, city, or village clerk as the case may be.

(2) If the director determines at any time after the issuance of such a certificate that a resolution, ordinance, or regulation is being enforced in a manner inconsistent with the Environmental Protection Act or any rule or regulation adopted pursuant to such act in any political subdivision holding a certificate of exemption, the director may suspend the certificate of exemption

and the Environmental Protection Act shall apply in such political subdivision until such standards are met and a new certificate is issued.

(3) Any political subdivision desiring a certificate of exemption shall make application for such certificate by filing a petition for certificate of exemption with the director. The director or his or her designated representative shall promptly investigate such petition. If the recommendation of the director or his or her designated representative is against the granting of a certificate of exemption and he or she, in his or her discretion, concludes that a hearing would be advisable, a hearing shall be held as provided in section 81-1507 on the questions of whether the resolution, ordinance, or regulation is consistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act and whether adequate provisions have been made for enforcement. The burden of proof shall be upon the political subdivision. A like hearing shall be held upon any proposed suspension of a certificate of exemption.

(4) If the director finds that the location, character, or extent of particular concentrations of population, air, water, or land contaminant sources, the geographic, topographic, or meteorological considerations, or any combination thereof are such as to make impracticable the maintenance of appropriate levels of air, water, or land quality without an areawide air, water, or land pollution control program, the director may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(5) Nothing in the Environmental Protection Act shall be construed to supersede or oust the jurisdiction of any local air, water, or land pollution control program in operation on May 26, 1971. Such program shall meet all requirements of the Environmental Protection Act for a local air, water, or land pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

(6) Until October 1, 1993, cities of the second class and villages shall be exempt from the provisions of the Environmental Protection Act and the Integrated Solid Waste Management Act pertaining to permits for and control of nonhazardous solid waste disposal systems if such cities and villages provide solid waste disposal systems which do not result in the pollution of waters of the state. The department shall act in an advisory capacity to such cities and villages and shall have the right to inspect solid waste disposal sites and evaluate them according to the site evaluation criteria promulgated pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. The department shall notify the community of the results of its evaluation.

(7) The council shall, by July 1, 1992, adopt and promulgate rules and regulations which provide standards for the closure and postclosure care of all landfills, including landfills previously exempted under this section.

**Source:** Laws 1971, LB 939, § 28; Laws 1972, LB 1435, § 15; Laws 1980, LB 853, § 7; Laws 1984, LB 1078, § 8; Laws 1991, LB 67, § 2; Laws 1992, LB 1257, § 91.

**Cross References**

Integrated Solid Waste Management Act, see section 13-2001.

**81-1528.01 Repealed. Laws 1986, LB 491, § 40.**

**81-1529 Act, how construed.**

Nothing in the Environmental Protection Act shall be construed to:

- (1) Grant to the department any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops or private property appurtenant thereto;
- (2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution; or
- (3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

**Source:** Laws 1971, LB 939, § 29; Laws 1987, LB 152, § 11.

**81-1530 Repealed. Laws 1987, LB 152, § 12.**

**81-1531 Repealed. Laws 1974, LB 1029, § 10.**

**81-1531.01 Act, how construed.**

Nothing in the Environmental Protection Act shall be construed to apply to any wells or holes covered by sections 57-901 to 57-922.

**Source:** Laws 1983, LB 356, § 10.

**81-1531.02 Uranium mining; department; regulatory duties; prohibited methods; enforcement.**

(1) The department shall recommend an appropriate regulatory policy for controlling uranium mining to be presented to the council and the Legislature by January 1, 1986. The department shall evaluate all reasonable regulatory options for addressing the impacts on air, land, and water quality of uranium mining by methods other than mineral production and injection wells which are presently regulated. The department shall examine and consider regulatory programs created by other states and the federal government, their applicability to Nebraska, and their success in the states or areas where they are used and shall consider, but not be limited to, the following policy options:

- (a) The development of uranium surface and shaft mining regulations;
- (b) The development of regulations addressing appropriate development, mitigation, or reclamation standards for uranium mining or uranium mining-related activities;
- (c) The appropriateness of developing regulations addressing ground or surface water use standards for uranium mining or uranium mining-related activities as a means of limiting the impact of uranium mining on land and water resources; and
- (d) The use of any other existing state regulatory programs to control or regulate the impacts of uranium mining on land and water resources.

(2) The department shall perform the evaluation in cooperation with other state agencies which have or could have a role in regulating the impacts of uranium mining on Nebraska's people and resources or in controlling other uranium mining activities. The department shall also create a citizen advisory panel, of interested or affected parties, which shall be consulted for its input and opinion on the results of the evaluation of regulatory options.

(3) Uranium mining by any method other than mineral production and injection wells shall be prohibited until legislation is passed authorizing the department to regulate such mining activities. It is the intent of the Legislature

that uranium mining shall be regulated by the department. Upon receipt of evidence that uranium mining by any method other than by mineral production and injection wells or related activities are presenting or are likely to present an imminent and substantial threat to the environment, the director shall petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts or to require any person to stop such acts or to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with this section.

**Source:** Laws 1983, LB 356, § 11; Laws 1984, LB 742, § 2; Laws 1986, LB 1008, § 3.

**81-1532 Act, how cited.**

Sections 81-1501 to 81-1532 shall be known and may be cited as the Environmental Protection Act.

**Source:** Laws 1971, LB 939, § 32; Laws 1983, LB 356, § 12; Laws 1987, LB 114, § 18; Laws 1991, LB 528, § 2; Laws 1992, LB 1257, § 92; Laws 1994, LB 570, § 12; Laws 1998, LB 1209, § 30; Laws 2000, LB 1234, § 13; Laws 2001, LB 461, § 8; Laws 2004, LB 449, § 3.

**81-1533 Repealed. Laws 2000, LB 1234, § 24.**

(b) LITTER REDUCTION AND RECYCLING ACT

**81-1534 Act, how cited.**

Sections 81-1534 to 81-1566 shall be known and may be cited as the Nebraska Litter Reduction and Recycling Act.

**Source:** Laws 1979, LB 120, § 1; Laws 1993, LB 203, § 2; Laws 2007, LB568, § 1.  
Termination date October 30, 2010.

**81-1535 Legislative declaration; litter and recycling program.**

The Legislature declares that the protection of the public health, safety, and well-being, the maintenance of the economic productivity and environmental quality of the state, and the conservation of natural resources require the implementation of a comprehensive litter and recycling program throughout the state and the rapid development of technologically and economically feasible operational projects for the recovery of energy and resources.

**Source:** Laws 1979, LB 120, § 2.  
Termination date October 30, 2010.

**81-1536 Definitions, where found.**

For purposes of the Nebraska Litter Reduction and Recycling Act, unless the context otherwise requires, the definitions found in sections 81-1537 to 81-1548.04 shall be used.

**Source:** Laws 1979, LB 120, § 3; Laws 1981, LB 253, § 2; Laws 1993, LB 203, § 3.  
Termination date October 30, 2010.

**81-1537 Department, defined.**

Department shall mean the Department of Environmental Quality.

**Source:** Laws 1979, LB 120, § 4; Laws 1993, LB 3, § 50.  
Termination date October 30, 2010.

**81-1538 Council, defined.**

Council shall mean the Environmental Quality Council.

**Source:** Laws 1979, LB 120, § 5; Laws 1993, LB 3, § 51.  
Termination date October 30, 2010.

**81-1539 Fund, defined.**

Fund shall mean the Nebraska Litter Reduction and Recycling Fund.

**Source:** Laws 1979, LB 120, § 6.  
Termination date October 30, 2010.

**81-1540 Director, defined.**

Director shall mean the Director of Environmental Quality.

**Source:** Laws 1979, LB 120, § 7; Laws 1993, LB 3, § 52.  
Termination date October 30, 2010.

**81-1541 Litter, defined.**

Litter shall mean all waste material susceptible to being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but not including the wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

**Source:** Laws 1979, LB 120, § 8; Laws 1981, LB 253, § 3.  
Termination date October 30, 2010.

**81-1542 Manufacturer, defined.**

Manufacturer shall mean any person engaged in a business activity who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sale of tangible personal property which the person has made, produced, manufactured, processed, or fabricated which is within any of the categories listed in section 81-1560.

**Source:** Laws 1979, LB 120, § 9; Laws 1981, LB 253, § 4; Laws 1993, LB 203, § 4.  
Termination date October 30, 2010.

**81-1543 Person, defined.**

Person shall mean any natural person, political subdivision, government agency, public or private corporation, partnership, limited liability company, joint venture, association, firm, or individual proprietorship.

**Source:** Laws 1979, LB 120, § 10; Laws 1993, LB 121, § 539.  
Termination date October 30, 2010.

**81-1544 Public place, defined.**

Public place shall mean any place or area in the state that is used or held out for use by the public, whether owned or operated by public or private interests.

**Source:** Laws 1979, LB 120, § 11.  
Termination date October 30, 2010.

**81-1545 Recycling, defined.**

Recycling shall mean the process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering and reusing the resources contained therein.

**Source:** Laws 1979, LB 120, § 12.  
Termination date October 30, 2010.

**81-1546 Recycling center, defined.**

Recycling center shall mean a central collection point in a community for recyclable materials.

**Source:** Laws 1979, LB 120, § 13.  
Termination date October 30, 2010.

**81-1547 Resource recovery, defined.**

Resource recovery shall mean a system or process for the recovery of materials or energy from waste material.

**Source:** Laws 1979, LB 120, § 14.  
Termination date October 30, 2010.

**81-1548 Source separation, defined.**

Source separation shall mean separation by the public from their general refuse of recyclable material.

**Source:** Laws 1979, LB 120, § 15.  
Termination date October 30, 2010.

**81-1548.01 Wholesaler, defined.**

Wholesaler shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from sales at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any tangible personal property falling into any of the categories listed in section 81-1560 which is sold at the wholesale level.

**Source:** Laws 1981, LB 253, § 5; Laws 1993, LB 203, § 5.  
Termination date October 30, 2010.

**81-1548.02 Retailer, defined.**

Retailer shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sales of tangible personal property for storage, use, or other consumption or from the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption of any of

the products, including byproducts, falling into the categories listed in section 81-1560.02.

**Source:** Laws 1981, LB 253, § 6; Laws 1993, LB 203, § 6.  
Termination date October 30, 2010.

**81-1548.03 Tangible personal property, defined.**

Tangible personal property shall mean all tangible personal property except:

(1) Gas, electricity, and water delivered through mains, lines, pipes, or channels to purchasers;

(2) Food and food products for human or pet consumption sold in bulk form and not packaged or subpackaged in individual containers, packages, or units, or a type of size not suitable for sale to consumers purchasing in the ordinary course of retail marketing; and

(3) Fertilizer, seeds, annual plants, any form of animal life, and animal feed sold for resale or use in the agricultural food industry.

**Source:** Laws 1981, LB 253, § 7.  
Termination date October 30, 2010.

**81-1548.04 Gross proceeds, defined.**

Gross proceeds shall mean the total receipts from all sales less expenditures for the purchase of any item in this state for the purpose of recycling such item.

**Source:** Laws 1981, LB 253, § 8.  
Termination date October 30, 2010.

**81-1549 Council; adopt rules and regulations.**

In addition to other powers and duties, the council shall have the power to propose and to adopt and promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of the Nebraska Litter Reduction and Recycling Act.

**Source:** Laws 1979, LB 120, § 16; Laws 1981, LB 253, § 9; Laws 1993, LB 203, § 7.  
Termination date October 30, 2010.

**81-1550 Litter prone activities and areas; litter receptacles; required.**

Litter prone activities and areas shall be required to have appropriate litter receptacles meeting minimum standards established by the department. The council shall, by regulation, determine what are litter prone activities and areas.

**Source:** Laws 1979, LB 120, § 17.  
Termination date October 30, 2010.

**81-1551 Litter receptacles; owner or operator provide and maintain; penalty.**

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by section 81-1550 to procure and place such receptacles at his or her own expense on the premises and to maintain the same in accord with rules and regulations

adopted by the council. Any person who fails to place such litter receptacles on the premises in the numbers required or to maintain such receptacles in the manner required shall be guilty of a Class V misdemeanor.

**Source:** Laws 1979, LB 120, § 18; Laws 1981, LB 253, § 10.  
Termination date October 30, 2010.

**81-1552 Litter receptacle; abuse; misuse; prohibited; violation; penalty.**

(1) No person shall damage, deface, abuse, or misuse any litter receptacle not owned by him or her so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with the permission of the owner of such receptacle.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1979, LB 120, § 19; Laws 1981, LB 253, § 11.  
Termination date October 30, 2010.

**81-1553 Repealed. Laws 2007, LB 79, § 3.**

**81-1553.01 Litter problem; surveys; department; grant funds; progress report.**

Prior to April 5, 2007, in order to identify the litter problem more fully and to measure the progress made by the department, the department conducted, or granted funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, followup surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor.

**Source:** Laws 2007, LB568, § 2.  
Termination date October 30, 2010.

**81-1554 Department; jobs for unemployed; design programs; grant funds.**

In order to provide employment and to establish litter free areas, the department may design programs and grant funds for the use of unemployed persons on a seasonal and part-time basis. In designing such programs, the department shall cooperate and coordinate with federal, other governmental, and private programs aimed at providing jobs for the unemployed.

**Source:** Laws 1979, LB 120, § 21.  
Termination date October 30, 2010.

**81-1555 Department; encourage effective local littering laws.**

The department shall work toward establishing effective local ordinances and resolutions relating to littering laws.

**Source:** Laws 1979, LB 120, § 22.  
Termination date October 30, 2010.

**81-1556 Act; enforcement; personnel.**

The director may designate trained employees of the department to enforce and administer the Nebraska Litter Reduction and Recycling Act and all rules and regulations adopted pursuant to the act. The director may contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of the act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of the act and all rules and regulations adopted pursuant to the act and are empowered to issue citations to any person violating any provision of the act in their presence.

**Source:** Laws 1979, LB 120, § 23; Laws 1981, LB 253, § 13; Laws 1993, LB 203, § 9.

Termination date October 30, 2010.

**81-1557 Department; littering laws; appropriate provisions posted.**

The penalties which may be imposed for littering in this state and any provisions of the Nebraska Litter Reduction and Recycling Act deemed appropriate by the department shall be posted along public highways of this state, at visitor centers, at the entrance to state parks and recreation areas, at public beaches, and at such other public places as the department determines is necessary to accomplish the purposes of the act.

**Source:** Laws 1979, LB 120, § 24; Laws 1981, LB 253, § 14; Laws 1993, LB 203, § 10.

Termination date October 30, 2010.

**81-1558 Nebraska Litter Reduction and Recycling Fund; created; use; investment.**

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. Any money in the 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.

**Source:** Laws 1979, LB 120, § 25; Laws 1981, LB 253, § 15; Laws 1993, LB 203, § 11; Laws 1994, LB 1066, § 113; Laws 1999, LB 592, § 2.

Termination date October 30, 2010.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-1559 Annual litter fee; manufacturer; wholesaler; rate; collection and administration; license; revocation; violation; penalty.**

(1) To aid in defraying the cost of administration of the Nebraska Litter Reduction and Recycling Act and the Waste Reduction and Recycling Incentive Fund, there shall be collected an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including byproducts, in the case of manufacturers and equal to one hundred seventy-five dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of wholesalers. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom if the person performs only the growing or raising function of such animal, bird, or insect. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 each year, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No manufacturer or wholesaler in the state shall produce or sell any product which falls within the categories enumerated in this section and section 81-1560 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. If the applicant is an individual, the application for the license shall include the applicant's social security number. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 81-1560.03, any manufacturer or wholesaler who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

**Source:** Laws 1979, LB 120, § 26; Laws 1981, LB 253, § 19; Laws 1986, LB 1027, § 222; Laws 1993, LB 203, § 12; Laws 1997, LB 752, § 226.

Termination date October 30, 2010.

#### Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

**81-1560 Litter fee; manufacturer; wholesaler; products subject to; enumerated.**

The fee imposed by section 81-1559 shall be calculated only on the value of products or the gross proceeds of sales of products which directly contribute to litter as defined in section 81-1541 and which fall into the following categories: (1) Food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine, and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries.

**Source:** Laws 1979, LB 120, § 27; Laws 1981, LB 253, § 20.

Termination date October 30, 2010.

**81-1560.01 Annual litter fee; retailer; rate; collection and administration; license; revocation; violation; penalty.**

(1) There is hereby imposed on every person engaged in business within this state as a retailer selling products which fall within the categories enumerated in section 81-1560.02 an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of the sales which are consummated within this state except as provided in sections 81-1560.02 to 81-1560.04. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of the animal, bird, or insect. The annual litter fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No retailer in this state shall sell any product which falls within the categories enumerated in section 81-1560.02 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain a license shall be a Class IV misdemeanor. Except as provided in sections 81-1560.02 to 81-1560.04, any retailer who fails to pay the fee imposed pursuant to subsection (1) of this section may have the license revoked in the same manner as permits are revoked pursuant to section 77-2705.

**Source:** Laws 1981, LB 253, § 16; Laws 1993, LB 203, § 13; Laws 1995, LB 581, § 1.

Termination date October 30, 2010.

**Cross References**

Nebraska Revenue Act of 1967, see section 77-2701.

**81-1560.02 Litter fee; retailer; products subject to fee.**

The fee imposed by section 81-1560.01 shall be calculated only on the gross proceeds of sales of products falling into the following categories:

- (1) Food for human consumption, beverages, soft drinks, carbonated water, liquor, wine, beer, and other malt beverages, unless sold by retailers solely for consumption indoors on the retailer's premises;
- (2) Food for pet consumption;
- (3) Cigarettes and other tobacco products;
- (4) Household paper and household paper products;
- (5) Cleaning agents; and
- (6) Kitchen supplies.

**Source:** Laws 1981, LB 253, § 17; Laws 1993, LB 203, § 14.

Termination date October 30, 2010.

**81-1560.03 Litter fee; payment; nonduplication.**

Any person engaged in business as both a manufacturer and a retailer or as both a wholesaler and a retailer shall pay the fee either under section 81-1559 or 81-1560.01, whichever is greater. No person shall be required to pay a fee

more than once on the same item or product under the Nebraska Litter Reduction and Recycling Act.

**Source:** Laws 1981, LB 253, § 18; Laws 1993, LB 203, § 15.  
Termination date October 30, 2010.

**81-1560.04 Litter fee; taxable and nontaxable sales; calculation.**

In lieu of requiring each license holder to separately account for taxable and nontaxable sales under sections 81-1560.01 and 81-1560.02, the Tax Commissioner shall provide by rule and regulation that the tax imposed under section 81-1560.01 may be reported and paid based on a percentage of the sales for a particular type of business if the Tax Commissioner determines that the percentage reasonably approximates the taxable activity of the particular type of business.

**Source:** Laws 1993, LB 203, § 16.  
Termination date October 30, 2010.

**81-1561 Litter Fee Collection Fund; created; Nebraska Litter Reduction and Recycling Fund; distribution; procedure; purposes.**

(1) The Tax Commissioner shall deduct and withhold from the litter fee collected a fee sufficient to reimburse himself or herself for the cost of collecting and administering the litter fee and shall deposit such collection fee in the Litter Fee Collection Fund which is hereby created. The Litter Fee Collection Fund shall be appropriated to the Department of Revenue. Any money in the Litter Fee Collection 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.

(2) The Tax Commissioner shall remit the balance of the litter fee collections to the Department of Environmental Quality. The department shall allocate and distribute funds from the Nebraska Litter Reduction and Recycling Fund in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, for the following activities:

(a) Programs of public education, motivation, and participation aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(i) The distribution of informative materials to elementary and secondary schools;

(ii) The purchase and erection of roadside signs;

(iii) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(iv) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(v) Any other public information method selected by the department, including the use of media;

(b) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including, but not limited to:

(i) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(ii) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of the Nebraska Litter Reduction and Recycling Act;

(iii) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(iv) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(c) New or improved community recycling and source separation programs, including, but not limited to:

(i) Expansion of existing and creation of new community recycling centers;

(ii) Expansion of existing and creation of new source separation programs;

(iii) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(iv) Providing advice and assistance on matters relating to recycling and source separation, including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

**Source:** Laws 1979, LB 120, § 28; Laws 1981, LB 253, § 21; Laws 1985, LB 273, § 69; Laws 1993, LB 3, § 53; Laws 1993, LB 203, § 17; Laws 1994, LB 1066, § 114; Laws 2003, LB 408, § 5; Laws 2005, LB 426, § 17.

Termination date October 30, 2010.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

#### **81-1562 Annual grants; separate application.**

All grants under section 81-1561 shall be made on an annual basis. A separate application shall be required for each grant sought.

**Source:** Laws 1979, LB 120, § 29.

Termination date October 30, 2010.

#### **81-1563 Grant recipients; periodic reports.**

The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by grant recipients to insure that the purposes of the Nebraska Litter Reduction and Recycling Act are being achieved.

**Source:** Laws 1979, LB 120, § 30; Laws 1981, LB 253, § 22; Laws 1993, LB 203, § 18.

Termination date October 30, 2010.

**81-1564 Repealed. Laws 1981, LB 253, § 26.****81-1565 Funds; department; adopt eligibility guidelines for recipients.**

The department shall adopt guidelines for the determination of eligibility of public and private agencies and persons to receive funds pursuant to the Nebraska Litter Reduction and Recycling Act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of the act.

**Source:** Laws 1979, LB 120, § 32; Laws 1981, LB 253, § 23; Laws 1993, LB 203, § 19.

Termination date October 30, 2010.

**81-1566 Act; termination; extension; considerations.**

The Nebraska Litter Reduction and Recycling Act shall terminate on October 30, 2010, 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.

**Source:** Laws 1979, LB 120, § 33; Laws 1981, LB 253, § 24; Laws 1985, LB 127, § 1; Laws 1992, LB 1257, § 93; Laws 2001, LB 337, § 1; Laws 2005, LB 33, § 1.

Termination date October 30, 2010.

**81-1566.01 Repealed. Laws 1999, LB 59, § 4.**

## (c) HAZARDOUS MATERIALS

**81-1567 Terms, defined.**

As used in sections 81-1567 to 81-1570, unless the context otherwise requires:

- (1) Discharge shall mean any leakage, seepage, or other release;
- (2) Hazardous materials shall mean all materials and substances which are defined as hazardous by Nebraska or federal law or by the regulations of any Nebraska or federal government agency as of July 10, 1984; and
- (3) Person shall mean any individual, partnership, limited liability company, corporation, association, or other entity.

**Source:** Laws 1984, LB 420, § 1; Laws 1993, LB 121, § 540.

**81-1568 Volunteer; limitation on liability.**

Any volunteer or any person who provides assistance or advice in attempting to mitigate or in mitigating the effects of an actual or threatened discharge of hazardous materials or who attempts to prevent, dispose of, or clean up or prevents, disposes of, or cleans up any such discharge shall not be subject to any civil liability or penalty, except that the person whose act or omission, in whole or in part, caused such actual or threatened discharge shall be liable for any negligence of such volunteer or other person.

**Source:** Laws 1984, LB 420, § 2.

**81-1569 Limitation on liability; exceptions.**

Section 81-1568 shall not apply to any person:

- (1) Whose act or omission caused in whole or in part such actual or threatened discharge and who would otherwise be liable; or
- (2) Who receives compensation other than reimbursement for out-of-pocket expenses for his or her services in rendering such assistance or advice.

**Source:** Laws 1984, LB 420, § 3.

**81-1570 Liability; when.**

Nothing in section 81-1568 shall be construed to limit or otherwise affect the liability of any person for damages resulting from his or her gross negligence or reckless or intentional misconduct.

**Source:** Laws 1984, LB 420, § 4.

## (d) LANDFILL AND WASTE DISPOSAL

**81-1571 Repealed. Laws 1992, LB 1257, § 105.**

**81-1572 Transferred to section 13-2026.**

**81-1573 Transferred to section 13-2027.**

**81-1574 Transferred to section 13-2028.**

## (e) STORAGE OF HAZARDOUS SUBSTANCES

**81-1575 Registration of storage tanks; registration form; fee; State Fire Marshal; rules and regulations.**

Commencing on January 1, 1986, the State Fire Marshal shall require the registration of all permanently located aboveground storage tanks used for the storage or dispensing of hazardous substances. A registration form shall be provided by and filed with the State Fire Marshal. The registration form shall be updated to detail any change in the usage or operation of the tank as such changes occur. A copy of each registration form shall be forwarded by the State Fire Marshal to the fire department located nearest to the particular storage tank. A registration fee shall be assessed by the State Fire Marshal. The registration fee shall be in an amount which is deemed necessary by the State Fire Marshal to compensate for the costs of administering sections 81-1575 to 81-1577, except that such fee shall not exceed ten dollars. All registration fees collected pursuant to this section shall be paid into the State Fire Marshal Cash Fund for the purpose of administering sections 81-1575 to 81-1577. The State Fire Marshal shall adopt and promulgate the rules and regulations he or she deems necessary to give notification to those individuals that need to register storage tanks under sections 81-1575 to 81-1577.

**Source:** Laws 1985, LB 383, § 1.

**81-1576 Terms, defined.**

As used in sections 81-1575 to 81-1577, unless the context otherwise requires:

- (1) Hazardous substance shall mean any substance defined in subsection (14) of section 101 of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980 as it existed on January 1, 1985, but not including any substance regulated as a hazardous waste under subtitle C of such act;

(2) Registration shall mean the submission of information on a form which includes, but is not limited to:

- (a) A description of the type and size of the storage tank;
- (b) The number of barrels or other measurement used to determine the storage capacity of the tank;
- (c) A list of all hazardous substances which are or will be stored in the tank;
- (d) The name and address of the facility at which the tank is located;
- (e) The name and address of the person, firm, or corporation owning the storage tank and, if different, the name and address of the person who operates the storage tank;
- (f) The name of the contact person and a telephone number where the contact person can be reached at any time in the event of an emergency involving the tank or facility at which the tank is located; and
- (g) If the owner or operator of the storage tank is a public agency, the registration shall include the name of the supervisor of the division, section, or office which operates the tank; and

(3) Storage tank shall mean any tank having a storage capacity in excess of one thousand gallons used for the containment of hazardous substances for any period of time, except those tanks which are regulated under rules and regulations adopted pursuant to section 81-502 in accordance with standard K 61.1(1972) of the American National Standards Institute.

**Source:** Laws 1985, LB 383, § 2; Laws 2002, LB 1105, § 509.

**81-1577 Registration; violation; penalty.**

Any person who is required to register pursuant to section 81-1575 or the rules and regulations thereunder and who fails to do so shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1985, LB 383, § 3.

**81-1577.01 Motor vehicle fuel storage tanks; aboveground tanks authorized.**

(1) The State Fire Marshal shall allow a tank used for the storage of motor vehicle fuel to remain aboveground if the tank was in existence on May 29, 1959, and is in compliance with the rules and regulations established pursuant to section 81-502.

(2) The State Fire Marshal shall permit by rule and regulation, in cities with a population of less than two thousand inhabitants, in villages, and in unincorporated areas, the installation of aboveground tanks to replace underground tanks used for the storage of motor vehicle fuel by dealers who sell motor vehicle fuel at retail. The capacity of the aboveground replacement tanks shall not exceed the total capacity of the underground tanks being replaced or eighteen thousand gallons per retail facility, whichever is less.

(3) For purposes of this section, dealers and motor vehicle fuel shall have the meanings provided in section 66-482 for importers and motor vehicle fuel.

**Source:** Laws 1990, LB 1118, § 1; Laws 1991, LB 627, § 143.

## (f) LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT

**81-1578 Act, how cited.**

Sections 81-1578 to 81-15,116 shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

**Source:** Laws 1986, LB 491, § 1; Laws 1987, LB 426, § 1; Laws 1988, LB 1092, § 1; Laws 1989, LB 761, § 1; Laws 1991, LB 837, § 2; Laws 1991, LB 716, § 1; Laws 1996, LB 1201, § 3.

**81-1579 Legislative policy.**

(1) The Legislature hereby declares that it is the policy of the State of Nebraska, in furtherance of its responsibility to cooperate and coordinate with the Central Interstate Low-Level Radioactive Waste Compact Commission and to protect the health, safety, and welfare of its citizens and the environment:

(a) To provide for the availability of capacity either within or outside the state for the commercial disposal of low-level radioactive waste generated within the state at commercial low-level radioactive waste disposal facilities as designated by the Central Interstate Low-Level Radioactive Waste Compact Commission, except for waste generated as a result of defense or federal research and development activities;

(b) To recognize that low-level radioactive waste can be most safely and efficiently managed on a regional basis; and

(c) To institute and maintain a regulatory program for commercial disposal of low-level radioactive waste at such facilities.

(2) It is also the policy of the State of Nebraska that the cost of disposal of low-level radioactive waste be borne by the generators of such waste. In furtherance of such policy, the state shall not be liable for any financial subsidy of the construction and maintenance of a low-level radioactive waste disposal facility.

(3) The Legislature hereby finds that it is the policy of the state that a facility for the disposal of low-level radioactive waste shall be established at a location that best protects the health and safety of its citizens and the environment. In selecting such location, the developer shall emphasize geologic, topographic, demographic, hydrologic, and other technical factors that contribute to such protection and shall construct, operate, and maintain such facility in a manner consistent with state and federal requirements.

It is the intent of the Legislature that potential host communities be actively and voluntarily involved in the siting process. To the extent possible, consistent with the highest level of protection for the health and safety of the citizens of the state and protection of the environment, the developer shall make every effort to locate the facility where community support is evident.

**Source:** Laws 1986, LB 491, § 2; Laws 1987, LB 426, § 2; Laws 1988, LB 1092, § 2.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-1579.01 Offices of commission; legislative intent.**

It is the intent of the Legislature that the Central Interstate Low-Level Radioactive Waste Compact Commission shall establish a satellite office in the

State of Nebraska within thirty days after May 26, 1989, and shall establish its central offices in the State of Nebraska prior to commencement of construction of the facility.

**Source:** Laws 1988, LB 1092, § 7; Laws 1989, LB 761, § 2.

**81-1580 Act; purpose.**

The purpose of the Low-Level Radioactive Waste Disposal Act is to effectuate the policies set forth in section 81-1579 by providing:

(1) A program of effective regulation of disposal of low-level radioactive waste based on zero-release objectives that will protect the public health and environment with an adequate margin of safety; and

(2) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to disposal of low-level radioactive waste.

Nothing in the Low-Level Radioactive Waste Disposal Act shall be intended to establish any other regulatory responsibilities pertaining to radioactive materials except for the licensing and regulation of a facility.

**Source:** Laws 1986, LB 491, § 3; Laws 1987, LB 426, § 3.

**81-1581 Definitions, where found.**

For purposes of the Low-Level Radioactive Waste Disposal Act, unless the context otherwise requires, the definitions found in sections 81-1582 to 81-1597 shall be used.

**Source:** Laws 1986, LB 491, § 4; Laws 1987, LB 426, § 4; Laws 1988, LB 1092, § 3; Laws 1989, LB 761, § 3; Laws 1996, LB 1201, § 4.

**81-1582 Byproduct material, defined.**

Byproduct material shall mean (1) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

**Source:** Laws 1986, LB 491, § 5.

**81-1583 Closure or site closure and stabilization, defined.**

Closure or site closure and stabilization shall mean those actions that are taken upon completion of operations which prepare the disposal site for custodial care and which assure that the disposal site will remain stable and will not need ongoing active maintenance.

**Source:** Laws 1986, LB 491, § 6.

**81-1584 Council, defined.**

Council shall mean the Environmental Quality Council.

**Source:** Laws 1986, LB 491, § 7; Laws 1993, LB 3, § 54.

**81-1584.01 Custodial care, defined.**

Custodial care shall mean the continued observation, monitoring, and care of a facility for a minimum of one hundred years following the operational life of the facility and closure pursuant to the rules and regulations of the department.

**Source:** Laws 1987, LB 426, § 5; Laws 1996, LB 1201, § 6.

**81-1585 Decommissioning, defined.**

Decommissioning shall mean final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

**Source:** Laws 1986, LB 491, § 8.

**81-1586 Department, defined.**

Department shall mean the Department of Environmental Quality.

**Source:** Laws 1986, LB 491, § 9; Laws 1993, LB 3, § 55.

**81-1586.01 Developer, defined.**

Developer shall mean any person or commercial entity seeking to site, license, or operate a facility within this state.

**Source:** Laws 1988, LB 1092, § 4.

**81-1587 Director, defined.**

Director shall mean the Director of Environmental Quality.

**Source:** Laws 1986, LB 491, § 10; Laws 1993, LB 3, § 56.

**81-1588 Disposal, defined.**

Disposal shall mean the isolation and final disposition of radioactive waste from the biosphere by emplacement in a facility that employs technology dictated by a zero-release objective.

**Source:** Laws 1986, LB 491, § 11; Laws 1987, LB 426, § 6.

**81-1589 High-level radioactive waste, defined.**

High-level radioactive waste shall mean (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel, (3) solids into which such liquid wastes have been converted, and (4) other highly radioactive waste material as defined by the United States Nuclear Regulatory Commission.

**Source:** Laws 1986, LB 491, § 12.

**81-1590 Facility, defined.**

Facility shall mean the land, building, and equipment selected pursuant to the Central Interstate Low-Level Radioactive Waste Compact and used or to be used for the disposal of low-level radioactive waste.

**Source:** Laws 1986, LB 491, § 13; Laws 1987, LB 426, § 7; Laws 1989, LB 761, § 4.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-1590.01 Licensed facility operator, defined.**

Licensed facility operator shall mean any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the department.

**Source:** Laws 1996, LB 1201, § 5.

**81-1591 Low-level radioactive waste, defined.**

Low-level radioactive waste shall mean radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (2) of section 81-1582 and classified by the federal government as low-level radioactive waste but shall not include waste which remains a federal responsibility as designated in section 3(b) of the Low-Level Radioactive Waste Policy Act, as amended, 42 U.S.C. 2021C(b).

**Source:** Laws 1986, LB 491, § 14; Laws 1989, LB 761, § 5.

**81-1591.01 Operational life of the facility, defined.**

Operational life of the facility shall mean the period of time commencing when low-level radioactive waste is initially received at the facility and ending when the facility permanently ceases to receive such waste for disposal.

**Source:** Laws 1989, LB 761, § 6.

**81-1592 Person, defined.**

Person shall mean any individual, corporation, partnership, limited liability company, firm, association, joint venture, trust, estate, public or private institution, group, public agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal governmental agencies.

**Source:** Laws 1986, LB 491, § 15; Laws 1987, LB 426, § 8; Laws 1993, LB 121, § 541.

**81-1593 Radioactive material, defined.**

Radioactive material shall mean any material, solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material shall include accelerator-produced, byproduct, naturally occurring, source, and special nuclear materials.

**Source:** Laws 1986, LB 491, § 16.

**81-1594 Source material, defined.**

Source material shall mean (1) uranium or thorium or any combination thereof in any chemical or physical form or (2) ores which contain by weight one-twentieth of one percent or more of uranium or thorium or any combination thereof. Source material shall not include special nuclear material.

**Source:** Laws 1986, LB 491, § 17.

**81-1595 Special nuclear material, defined.**

Special nuclear material shall mean (1) plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235 but does not include source material or (2) any material artificially enriched by any of the foregoing, but shall not include source material.

**Source:** Laws 1986, LB 491, § 18.

**81-1596 Spent nuclear fuel, defined.**

Spent nuclear fuel shall mean irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent fuel shall include the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

**Source:** Laws 1986, LB 491, § 19.

**81-1597 Transuranic waste, defined.**

Transuranic waste shall mean radioactive waste containing alpha emitting transuranic elements at levels determined by the United States Nuclear Regulatory Commission to be transuranic waste.

**Source:** Laws 1986, LB 491, § 20.

**81-1598 Department; designated agency.**

The department shall be designated as the agency responsible for the administration of the Low-Level Radioactive Waste Disposal Act.

**Source:** Laws 1986, LB 491, § 21.

**81-1599 Department; powers and duties.**

The department shall have and may exercise the following powers and duties to carry out the Low-Level Radioactive Waste Disposal Act:

- (1) Develop a program for the regulation of disposal of low-level radioactive waste based on a zero-release objective;
- (2) Issue, modify, suspend, or revoke licenses or orders;
- (3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation;
- (4) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;
- (5) Enter upon any private or public property at all reasonable times to determine compliance with the act and rules and regulations adopted and promulgated pursuant to the act;

(6) Institute training programs to qualify personnel to administer the act and make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of the act;

(7) Enter into agreements with the federal government, other states, or interstate agencies by which the department agrees to perform inspections and other functions relating to the disposal of low-level radioactive waste on a cooperative basis with the federal government, other states, or interstate agencies;

(8) Require submission of plans, specifications, and other data for siting, construction, and operation of a facility;

(9) Require proper operation and maintenance of a facility;

(10) Require licensees (a) to keep detailed records of each and every release which may cause or contribute to air, water, or land pollution or to the exposure to the environment of radioactive or hazardous substances, (b) to inform the department of each such event within twenty-four hours of its occurrence, and (c) to make such records available for inspection by the department, the public, and other interested persons;

(11) Require licensees to adopt low-level radioactive waste technological and operative procedures consistent with a zero-release objective; and

(12) Exercise all incidental powers necessary to carry out the purposes of the Low-Level Radioactive Waste Disposal Act.

**Source:** Laws 1986, LB 491, § 22; Laws 1987, LB 426, § 9.

#### **81-1599.01 Acceptance of applications for licensure; limitation.**

The department shall not accept any applications for licensure as provided in section 81-15,101 prior to October 1, 1989.

**Source:** Laws 1988, LB 1092, § 13.

#### **81-1599.02 Nebraska representatives to commission; appointment.**

Pursuant to the Central Interstate Low-Level Radioactive Waste Compact, Nebraska as the host state shall have two at-large voting members and one nonvoting member from the county in which the facility is located on the Central Interstate Low-Level Radioactive Waste Commission. The members of the commission representing Nebraska shall be appointed by the Governor with the approval of a majority of the members of the Legislature, and such members shall serve at the pleasure of the Governor. The Governor shall appoint the nonvoting member upon submission of an application for a license for the operation of a facility or on March 22, 1991, whichever occurs later. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature. If any appointee receives less than majority approval by the members of the Legislature, the Governor shall appoint another person to represent Nebraska on the commission within ten days of the failure to receive such approval. The members representing Nebraska on the commission may, when necessary, designate an alternate member to represent Nebraska.

**Source:** Laws 1989, LB 761, § 7; Laws 1991, LB 837, § 3.

## Cross References

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,100 Council; disposal of low-level radioactive waste; adopt rules and regulations; considerations.**

In order to carry out the purposes of the Low-Level Radioactive Waste Disposal Act, the council shall adopt and promulgate rules and regulations for the disposal of low-level radioactive waste. In adopting such rules and regulations, the council shall consider, but not be limited to, requirements for licensing, including terms, conditions, amendment, suspension, or revocation thereof, performance objectives and technical requirements, financial assurance, record-keeping, reporting, testing, and such other requirements established by the United States Nuclear Regulatory Commission at 10 C.F.R. part 61.

**Source:** Laws 1986, LB 491, § 23.

**81-15,101 License application; contents; transfer; limitation; review, when; department; duties.**

(1) Each application for a license shall be in writing and shall state such information as the department may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant deemed reasonable and necessary to protect the public health and environment with an adequate margin of safety. The applicant shall also describe the funding arrangements such applicant will make to provide for custodial care. The department may at any time after the filing of the application and before the expiration of the license require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee.

(2) No license issued under the Low-Level Radioactive Waste Disposal Act shall be assigned or in any manner disposed of unless the department, after securing full information, finds that the transfer is in accordance with the act and gives its consent in writing.

(3) If any person becomes the legal or beneficial owner of more than fifty percent of any class of the issued and outstanding equity securities of an applicant or licensee at any time after the application has been made and before the expiration of the license, the department shall conduct a review which shall include, but not be limited to, the environmental compliance record and financial responsibility of such person. At the conclusion of the review, the department shall issue a report of its findings, including its conclusions regarding the adequacy of such person to fulfill the provisions of the application or license and all laws, rules, and regulations. Copies of the report shall be sent to the Governor, Legislature, and local monitoring committee.

**Source:** Laws 1986, LB 491, § 24; Laws 1987, LB 426, § 10; Laws 1989, LB 761, § 8; Laws 1996, LB 1201, § 7.

**81-15,101.01 Selection of site; local monitoring committee; establishment; members; powers and duties; technical assistance; immunity from liability; Local Site Selection Cash Fund; Local Monitoring Committee Cash Fund; created; use; investment.**

(1)(a) The developer shall send written notification by certified or registered mail to the Governor and the Legislature of the selection of three proposed sites by January 1, 1989. Within thirty days after such notification, a local monitoring committee shall be established for each proposed site area. The local monitoring committees shall only exist until a site is selected, except that the local monitoring committee for the selected site area shall continue to exist.

(b) The committees shall represent the citizens of the proposed site areas and maintain communication with the developer and the department to assure protection of public health and safety and the protection of the air, land, and water resources of the area. It is the intent of the Legislature that the local monitoring committees provide significant input concerning local needs and resources regarding all relevant aspects of the site selection and, after a site is selected, that the remaining local monitoring committee provide significant input concerning local needs and resources regarding all relevant aspects of the construction, operation, monitoring, closure, and custodial care of the facility. The functions and duties of the committees shall be established pursuant to rules and regulations adopted and promulgated by the council.

(c) Each local monitoring committee shall have access to all monitoring data collected at the site and may contract with a geologist or any other technical expert who shall participate in the developer's onsite characterization and selection process. After a license is issued, the local monitoring committee may hire or contract with a qualified inspector as determined by the department. The inspector shall have the right of independent access to the facility and may inspect all records and activities at the site and carry out joint inspections with the department. The inspector shall report any violations to the department for appropriate action.

(2) The Conservation and Survey Division of the University of Nebraska shall provide without charge technical assistance to the local monitoring committee with the sampling, analysis, and testing provided for in this section, including, but not limited to, monitoring and performance of such sampling, analysis, and testing.

(3) Each local monitoring committee shall be composed of the following ten members, all of whom shall be residents of Nebraska:

(a) Two members selected from municipalities which have zoning jurisdiction within fifteen miles of the proposed site or, if there are no such municipalities, from the municipality in closest proximity to the proposed site, to be appointed by the chief executive officer of each municipality or by the governing body if there is no chief executive officer;

(b) Two members from the county in which the site is proposed, to be appointed by the governing body of the county. One member shall be an owner of real property that is within a three-mile radius of the proposed site, and one member shall be an at-large member;

(c) Two members appointed by the board of directors of the natural resources district in which the site is proposed; and

(d) Four members, to be appointed by the Governor, who reside within fifty miles of the proposed site, one of whom represents conservation, one of whom represents agriculture, one of whom is an at-large member, and one of whom is the chief of a fire department located within fifteen miles of the proposed site. If the appointments required by subdivisions (a) through (c) of this subsection have not been made within thirty days after May 26, 1989, the Governor shall

make such appointments. Appointment of a person ineligible to serve pursuant to the requirements of this section shall be considered the equivalent of not making an appointment.

(4) No member of a local monitoring committee shall be liable in any civil action for damages resulting from his or her acts of commission or omission arising out of and in the course of his or her rendering any services as such member in good faith. This section shall not grant immunity for the operation of a motor vehicle in connection with such services or to any member causing damages by willful and wanton acts of commission or omission.

(5) There is hereby created the Local Site Selection Cash Fund which shall be under the direction of the department. Fees or surcharges received pursuant to subdivision (1)(g) of section 81-15,104 shall be placed in the fund. The funds shall be appropriated equally among the committees and may be used for technical studies, determination of social and economic impact, and any other purpose deemed appropriate by such committees to the monitoring of the low-level radioactive waste site planning, construction, or maintenance to assure protection of the air, land, and water resources of the area. The committees shall file quarterly reports with the department verifying expenditures made pursuant to this subsection. The local monitoring committees may hire clerical staff and purchase supplies. The local monitoring committees may not hire professional or technical staff but may contract for professional or technical services.

(6) There is hereby created the Local Monitoring Committee Cash Fund which shall be under the direction of the department. Fees or surcharges received pursuant to subdivision (1)(h) of section 81-15,104 shall be placed in the fund. The fees and surcharges collected pursuant to subdivision (1)(h) of section 81-15,104 shall not exceed one hundred thousand dollars per year and shall be used by such local monitoring committee for all reasonable and necessary costs in order to carry out this section. The local monitoring committee may hire clerical staff and purchase office supplies. Except for a qualified inspector hired pursuant to subdivision (1)(c) of this section, the local monitoring committee may not hire professional or technical staff but may contract for professional or technical services.

(7) Any money in the Local Site Selection Cash Fund or the Local Monitoring Committee 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.

(8) The State Treasurer shall transfer the entire balance in the Local Monitoring Committee Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

**Source:** Laws 1987, LB 426, § 15; Laws 1988, LB 1092, § 5; Laws 1989, LB 761, § 9; Laws 1991, LB 716, § 3; Laws 1994, LB 1066, § 116; Laws 2005, LB 426, § 18.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-15,101.02 Applicant; design and planning requirements.**

No license for the operation of a facility shall be granted to any applicant who proposes a disposal design which uses traditional shallow land burial as

used prior to 1979. The disposal cells of the facility shall be built above grade levels and designed to meet the state's zero-release objectives. An applicant shall present a disposal design for aboveground disposal or other technology which contains one or more engineered, artificially constructed barriers to isolate the waste from the surrounding environment. An applicant shall present a plan of continuous environmental monitoring to detect any releases of radiation from the disposal facility and having the capability of providing early warning of releases of radiation from the facility. The monitoring plan shall cover the operational life of the facility and such time period following site closure and stabilization that is necessary to protect the health and safety of the public. An applicant shall present a plan for the recovery, cleanup, or other corrective action necessary as a result of the release of radiation from the facility. The facility design shall include a plan for retrievability and removal of all waste.

**Source:** Laws 1987, LB 426, § 16; Laws 1989, LB 761, § 10.

**81-15,101.03 Decommissioned nuclear reactor; waste; storage or disposal; waste from outside region; acceptance.**

(1) No low-level radioactive waste produced as a result of decommissioning a nuclear reactor shall be stored or disposed of at the facility until the department has determined that such facility is designed to safely store or dispose of such waste.

(2) Unless an emergency exists, no waste shall be accepted from outside the Central Interstate Low-Level Radioactive Waste Compact region without prior approval by the Legislature. No agreement entered into pursuant to an emergency situation shall extend beyond six months unless a continuation of the agreement is approved by the Legislature.

**Source:** Laws 1988, LB 1092, § 8; Laws 1989, LB 761, § 11.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,101.04 Class C low-level radioactive waste; storage; disposal; requirements.**

Class C low-level radioactive waste, as defined by 10 C.F.R. 61.55 in effect on January 26, 1983, shall be stored or disposed of separately from other types of low-level radioactive waste in containers which can be easily monitored and retrieved and shall be handled, stored, and disposed of in a manner consistent with the zero-release objective described in section 81-1580.

**Source:** Laws 1988, LB 1092, § 9.

**81-15,101.05 Mixed waste; requirements.**

Waste which is defined by the Nuclear Regulatory Commission or the federal Environmental Protection Agency as mixed waste shall be solidified, neutralized, and stabilized to the maximum degree practicable prior to shipment to the facility. Mixed waste which has not been treated to the degree required by this section shall not be disposed of at the facility.

**Source:** Laws 1988, LB 1092, § 10.

**81-15,102 Disposal site; acquisition or acceptance; construction contracts; conditions; use; notice required; contract for management; management; remedial cleanup costs.**

(1) The state shall accept or acquire, by gift, transfer, or purchase, from the licensed facility operator, title to the land and appurtenances used for the disposal of low-level radioactive waste after the expiration of both the operational life and closure period of the facility, if:

(a) Both the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality determine that (i) the requirements for site closure, decommissioning, and decontamination adopted pursuant to rules and regulations of the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality which are allowed under federal law have been met by the licensed facility operator and (ii) such operator is in compliance with all financial requirements; and

(b) The amendments to the Central Interstate Low-Level Radioactive Waste Compact made by Laws 1991, LB 837, section 4, codified in section 71-3521, are in effect and have been ratified by Congress.

The title to the land and appurtenances shall be transferred without cost to the state. Such transfer of title to the state does not relieve the developer, licensed facility operator, or generators of such waste from liability for their actions that occurred whether known or unknown during the design, construction, operation, and closure of the facility. Sites received by gift or transfer shall be subject to approval and acceptance by the Legislature on behalf of the state.

(2) The applicant shall notify the Governor and the Legislature before beginning any onsite geological activity, such as soil core sampling, to determine the suitability of a site in the State of Nebraska for use as a facility.

(3) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of this section. Such lands and appurtenances shall be used exclusively for the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such a site is leased for other use, the department shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. Remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the licensed facility operator, then proportionately against the generators of the radioactive waste and as set out in the Central Interstate Low-Level Radioactive Waste Compact found in section 71-3521.

(4) The state may contract for the management of a disposal site. The contractor shall be subject to licensing by the department and shall be subject to the surety and custodial care funding provisions of section 81-15,103.

(5) If and until licensing of a facility is approved, no further construction contracts shall be let or actual construction begun, other than filling the identified wetland, before the Department of Environmental Quality has conducted a six-month public education program to inform the people of the

county and the people of the state of the exact characteristics of the facility to be built, which program shall be undertaken forthwith.

**Source:** Laws 1986, LB 491, § 25; Laws 1987, LB 426, § 11; Laws 1994, LB 72, § 2; Laws 1996, LB 1201, § 8; Laws 1997, LB 307, § 218; Laws 1998, LB 1174, § 1.

**81-15,102.01 Property near facility; loss of value; compensation authorized; procedure.**

(1) Any owner of real property that is within a three-mile radius of the facility on the date a license for such facility is granted who believes that his or her property has declined in value as a result of construction of the facility or his or her heirs or assigns may apply for compensation as provided in this section. Any application for compensation shall be filed within five years of the date the facility first begins accepting low-level radioactive waste. Upon application by a real property owner, the county board of the county in which the facility is located shall hold a hearing to determine whether a loss of real property value has occurred. In reaching a decision, the county board shall consider the value of such property on the date a license is granted to the developer, using appraisals, valuations made by the county assessor of the county, data developed by the Property Tax Administrator, and any other relevant data, including appraisals which the county board may order. If the real property owner establishes by a preponderance of the evidence that his or her property has suffered loss which has not previously been compensated due to the construction of the facility, the developer shall provide compensation to the real property owner for the amount of the loss. Compensation shall be provided by the developer from fees assessed upon generators of low-level radioactive waste at the time such waste is delivered to the facility. Any real property owner aggrieved by a final decision of the county board shall be entitled to an appeal in the same manner as appeals are taken pursuant to section 23-135.

(2) As used in this section, real property owner shall mean the owner of record in the office of the county register of deeds on the date a license is granted to the developer as provided in section 81-15,101 or his or her heirs or assigns.

**Source:** Laws 1988, LB 1092, § 11; Laws 1995, LB 490, § 188.

**81-15,102.02 Department; testing of water and agricultural products.**

(1) The department shall offer to landowners directly adjacent to the facility's boundary an annual well and surface water sampling and analysis of any domestic water supply at no cost to the landowner.

(2) The department shall offer to landowners directly adjacent to the facility's boundary the opportunity for testing of agricultural products produced on the property for contamination by radioactivity. The testing shall be conducted pursuant to a plan developed by the department and at no cost to the landowner.

**Source:** Laws 1989, LB 761, § 16.

**81-15,102.03 Developer; provide emergency training and equipment.**

The developer shall provide to the appropriate local political subdivision training of the first responding fire, police, and emergency medical services to

handle emergency events at the facility and support for affected county emergency management planning, training, and central dispatch facilities as may be required to handle emergency events at the facility. The developer shall conduct such training programs or contract with appropriate public or private agencies for such training. The content of any such training program shall, prior to the commencement of the training program, be approved by the appropriate state agency which is responsible for such emergency training activity. The developer shall also provide to the appropriate local political subdivision any equipment which is necessary to provide emergency response due to the location and operation of the facility.

**Source:** Laws 1989, LB 761, § 17; Laws 1997, LB 138, § 54.

**81-15,103 Council; financial requirements; adopt rules and regulations; remedial cleanup costs; Radiation Site Closure and Reclamation Fund; Radiation Custodial Care Fund; created; use; investment; agreement with Department of Health and Human Services.**

(1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement sufficient to accomplish any necessary corrective action or cleanup on real or personal property caused by releases of radiation from a disposal site during the operational life and closure period of the facility and to comply with the requirements for decontamination, decommissioning, site closure, and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in the event the licensee abandons the facility or defaults for any reason in performing its operational, closure, or other requirements. Such sureties required under the license shall be compatible with applicable federal financial assurance regulations and shall be reviewed by the department at the time of license review under subsection (1) of section 81-15,106. Any arrangement which constitutes self-insurance shall not be allowed. In addition to the surety requirements, the licensee shall purchase property and third-party liability insurance and pay the necessary periodic premiums at all times in such amounts as determined by the council pursuant to rules and regulations adopted and promulgated pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Site Closure and Reclamation Fund which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Any money in the 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.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for custodial care.

(4)(a) Remedial cleanup costs which become necessary during the operational life and closure of the facility shall be the responsibility of the licensed

facility operator either directly or through applicable surety bonds, insurance, and other financial arrangements required pursuant to subsection (1) of this section, and (b) any remaining remedial cleanup costs which become necessary during the operational life and closure of the facility and which exceed funds available under subdivision (a) of this subsection shall be assessed proportionately by waste volume against the generators, then proportionately by waste volume against the party states as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(5) Remedial cleanup costs which become necessary during the period of custodial care shall be assessed (a) first, against the funds established pursuant to this section and any surety bonds, insurance, or other financial arrangements established for the facility, excluding such funds reserved for custodial care, (b) second, against the licensed facility operator, (c) third, against the generators based on proportionate waste volume, and (d) fourth, against the party states based on proportionate waste volume as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(6) All funds collected from licensees pursuant to subsection (3) of this section and subsection (1) of section 81-15,101 shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Custodial Care Fund which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing custodial care, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health, safety, and environment. Any money in the 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.

(7) The department may, by contract, agreement, lease, or license with the Department of Health and Human Services, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

**Source:** Laws 1986, LB 491, § 26; Laws 1987, LB 426, § 12; Laws 1995, LB 7, § 127; Laws 1996, LB 1044, § 868; Laws 1996, LB 1201, § 9; Laws 2007, LB296, § 757.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,104 Fees or surcharges for services; special assessment; failure to pay; effect; Low-Level Radioactive Waste Cash Fund; created; investment.**

(1) The department shall collect fees or surcharges established by the council for radiation protection services provided pursuant to the Low-Level Radioactive Waste Disposal Act and the Central Interstate Low-Level Radioactive Waste Compact. Services for which fees or surcharges may be established include (a) issuance, amendment, and renewal of licenses for facilities, (b) inspection of licensees, (c) environmental custodial care activities to assess the radiological impact of activities conducted by licensees, (d) certification of personnel to operate the facility, (e) such other activities of department personnel which are reasonably necessary to assure that the licensed facility is being operated in accordance with the Low-Level Radioactive Waste Disposal Act and which reasonably should be borne by the licensee, (f) the budget of the Central

Interstate Low-Level Radioactive Waste Compact Commission pursuant to Article IV, section (h)(2), of the compact, (g) payment by the developer of all reasonable and necessary costs of the local monitoring committees as prescribed in subsection (5) of section 81-15,101.01 until June 30, 1989, or until a site is selected, whichever is later, and (h) payment by the developer of all reasonable and necessary costs of the local monitoring committee where the facility is located as prescribed in subsection (6) of section 81-15,101.01.

(2) In determining the amount of such fees or surcharges, the council shall set the fees or surcharges in an amount sufficient to reimburse the state for its direct and indirect costs of the services specified in subsection (1) of this section. Any costs incurred by the State of Nebraska that exceed the fees or surcharges collected pursuant to this section shall be recovered through a special assessment against those generators of low-level radioactive waste which used the facility during the previous two years. The director shall compute the amount due from each generator based on the ratio of the fees or surcharges collected from a particular generator during the two-year period to the total fees or surcharges collected from all generators during such two-year period. Any special assessment collected pursuant to this section shall be remitted to the State Treasurer who shall credit it to the Low-Level Radioactive Waste Cash Fund. The council shall take into account any special arrangements between the state and a licensee, another state, or a federal agency from which the cost of the service is partially or fully recovered.

(3) When a licensee fails to pay the applicable fee or surcharge, the department may suspend or revoke the license or may issue an appropriate order.

(4) Except as provided in subsections (5) and (6) of section 81-15,101.01, any fees or surcharges collected pursuant to this section shall be deposited in the Low-Level Radioactive Waste Cash Fund, which fund is hereby created. The fund shall be administered by the department. Any money in the 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.

(5) The State Treasurer shall transfer the entire balance in the Low-Level Radioactive Waste Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

**Source:** Laws 1986, LB 491, § 27; Laws 1987, LB 426, § 13; Laws 1988, LB 1092, § 6; Laws 1989, LB 761, § 12; Laws 1994, LB 1066, § 117; Laws 2005, LB 426, § 19.

#### Cross References

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

#### **81-15,104.01 Council; designated as rate-review agency.**

For purposes of section (c) of Article III of the Central Interstate Low-Level Radioactive Waste Compact, the council is hereby designated as the rate-review agency for this state.

**Source:** Laws 1983, LB 200, § 3; R.S.1943, (1989), Appendix (BB); Laws 1991, LB 716, § 2.

#### Cross References

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,105 Inconsistent ordinances, resolutions, or regulations; superseded.**

The Low-Level Radioactive Waste Disposal Act shall supersede ordinances, resolutions, or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies which are inconsistent with the act.

**Source:** Laws 1986, LB 491, § 28.

**81-15,105.01 Acceptance of waste by facility; when.**

No waste shall be accepted by the facility until the amendments to the Central Interstate Low-Level Radioactive Waste Compact contained in Laws 1991, LB 837, are in effect in Kansas, Oklahoma, Louisiana, and Arkansas and have been ratified by Congress.

**Source:** Laws 1991, LB 837, § 1; Laws 1996, LB 1201, § 10.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,106 License; term; review; revocation; denial; hearing; closure of facility.**

(1) Licenses shall provide that a facility shall not accept waste for a period longer than thirty years or until five million cubic feet of low-level radioactive waste has been received, whichever occurs sooner. Licenses shall be reviewed every five years subsequent to the date of issuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws, rules, and regulations. Nothing in this subsection shall preclude a license from being reviewed and modified at any time during its term.

(2) The department may issue an order temporarily or permanently closing a facility prior to its scheduled closing date if it finds there is a potential hazard to public health, safety, or the environment which justifies a temporary or permanent closure. A facility that is temporarily closed shall remain closed for as long as necessary for remedial action and throughout the period of facility cleanup and stabilization. Before authorizing the reopening of a temporarily closed facility, the department shall provide an explanation of its reasons for authorizing the reopening.

(3) Any license issued under the Low-Level Radioactive Waste Disposal Act shall be subject to revocation for failure of the licensee to comply with the terms and conditions of the license, the applicable rules and regulations, or the provisions of the act. Any person whose license has been revoked shall be afforded an opportunity for a hearing by the department upon written application made within thirty days after service of notice of such revocation.

(4) In any proceeding for the denial of an application for a license or for revocation, suspension, or modification of a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

**Source:** Laws 1986, LB 491, § 29; Laws 1987, LB 426, § 14; Laws 1989, LB 761, § 13.

**81-15,107 License application; notice; hearing; environmental impact analysis required; appeal.**

(1) For any application for a license, the department shall provide an opportunity, after public notice, for written comments and shall hold a public hearing in the county in which the proposed facility is to be located. The cost of such hearing shall be borne by the applicant. All testimony offered at such hearing shall be recorded. The department shall issue a written determination of the action to be taken which is based upon findings to be included in the determination and upon evidence presented during the public comment period.

(2) The department shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The environmental impact analysis shall address each subject listed in Public Law 91-190, Title I, section 102(2)(c), 83 Stat. 853, and supporting regulations. The department shall prohibit any construction with respect to any activity for which an environmental impact analysis is required prior to completion of such analysis. The analysis shall be available to the public at the time notice is given for the hearing held pursuant to this section and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterways and ground water;

(c) Consideration of alternatives to the activities to be conducted, including alternative sites and engineering methods; and

(d) Consideration of the long-term impacts, including closure, decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination, and reclamation.

(3) Any final agency action or order may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1986, LB 491, § 30; Laws 1987, LB 426, § 17; Laws 1988, LB 352, § 176.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

#### **81-15,108 Emergency order; hearing.**

Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency including, but not limited to, closure of the site. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director, such person shall be afforded a hearing not later than ten days after receipt of such application. On the basis of such hearing, the director shall continue, modify, or revoke such order within thirty days after such hearing.

**Source:** Laws 1986, LB 491, § 31.

#### **81-15,109 Violations of act; action to enjoin.**

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Low-Level Radioactive Waste Disposal Act or any rule, regulation, or order issued pursuant to the act, the Attorney General or county attorney may apply to the district court for an order enjoining such acts or practices or for an order directing compliance. Upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**Source:** Laws 1986, LB 491, § 32.

**81-15,110 Disposal of low-level radioactive waste; license required.**

It shall be unlawful for any person to dispose of low-level radioactive waste unless licensed by the department pursuant to the Low-Level Radioactive Waste Disposal Act.

**Source:** Laws 1986, LB 491, § 33.

**81-15,111 Violation; criminal penalty.**

Any person who violates the Low-Level Radioactive Waste Disposal Act or rules, regulations, or orders issued pursuant to the act shall upon conviction be guilty of a Class IV felony.

**Source:** Laws 1986, LB 491, § 34.

**81-15,112 Violation; civil penalty; procedure; appeal.**

(1) Any person who (a) violates any licensing provision of the Low-Level Radioactive Waste Disposal Act, any rule, regulation, or order issued pursuant to the act, or any term, condition, or limitation of any license issued pursuant to the act or (b) commits any violation for which a license may be revoked under rules or regulations issued pursuant to the act may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this section, the department shall notify such person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (c) specifying each penalty which the department proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the department to the last-known address of such person. The person so notified may request a hearing, in writing, within thirty days of receipt of such notice. A hearing, if granted, shall be held in accordance with the Administrative Procedure Act. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such penalty, and the appeal shall be in accordance with the Administrative Procedure Act. On the request of the

department, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

**Source:** Laws 1986, LB 491, § 35; Laws 1988, LB 352, § 177.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-15,112.01 Strict liability in tort; when.**

Any person engaged in the disposal of low-level radioactive waste shall be subject to strict liability in tort for property damage, bodily injury, or death resulting from such disposal.

**Source:** Laws 1988, LB 1092, § 12.

**81-15,112.02 Repealed. Laws 1995, LB 15, § 6.**

**81-15,113 Contribution to Central Interstate Low-Level Radioactive Waste Compact Commission's budget; how paid.**

The state's annual contribution to the Central Interstate Low-Level Radioactive Waste Compact Commission's budget shall be paid by generators of low-level radioactive waste in this state which dispose of such waste in low-level radioactive waste disposal facilities through fees assessed by the department pursuant to section 81-15,104. Fees may be reasonably assessed on the basis of volume of the waste shipped and shall be deposited in the Low-Level Radioactive Waste Cash Fund. Such fees shall be due the first of July beginning in 1986 and shall continue until surcharges are collected pursuant to Article IV, section (h)(2), of the compact. There shall be no General Fund appropriation for the construction, maintenance, or long-term monitoring and care of a facility.

**Source:** Laws 1986, LB 491, § 36; Laws 1987, LB 426, § 18.

**Cross References**

**Central Interstate Low-Level Radioactive Waste Compact**, see section 71-3522.

**81-15,113.01 Community Improvements Cash Fund; created; surcharge; distribution; allocation; investment; legislative study.**

(1) There is hereby created the Community Improvements Cash Fund which shall be under the direction of the department. The Central Interstate Low-Level Radioactive Waste Compact Commission shall annually through 1998 remit to the department the funds received from the states belonging to the Central Interstate Low-Level Radioactive Waste Compact as compensation paid to the host state. When the facility begins operation, the developer shall levy, collect, and remit to the department a surcharge on the rates charged to the users of the facility which is sufficient to raise two million dollars per year together with any adjustments made by the department pursuant to this section. The department shall remit such surcharge to the State Treasurer who shall credit it to the Community Improvements Cash Fund. On October 1, 1990, and each October 1 thereafter, the department shall adjust the amount to be remitted by the developer by an amount equal to the percentage increase in the Consumer Price Index or, if publication of the Consumer Price Index is discontinued, a comparable index selected by the director. Any money in the 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.

(2) The department shall distribute money from the fund as follows:

(a) Prior to final site selection, three hundred thousand dollars per year shall be allocated for public purposes to be divided among the communities that are under active consideration to host the facility as provided in subsection (3) of this section;

(b) After the final site has been selected and until the facility is operational, three hundred thousand dollars per year shall be allocated for public purposes as provided in subsection (3) of this section. Acceptance of the funds distributed pursuant to this subdivision or subdivision (a) of this subsection shall in no way affect the siting process; and

(c) Once the facility is operational and during the operational life of the facility, the total amount in the fund shall be allocated each year for public purposes as provided in subsection (3) of this section.

(3) Money distributed pursuant to subdivisions (2)(a), (b), and (c) of this section shall be allocated as follows:

(a) Fifty percent of such money shall be distributed to incorporated municipalities which lie totally or partially within ten kilometers of the facility or the proposed facility based on the ratio of the population of the particular incorporated municipality to the total population of all such incorporated municipalities as determined by the latest federal census; and

(b) Fifty percent of such money shall be distributed to the county treasurer of the county where the facility is located or proposed to be located to be distributed to each political subdivision which levied property taxes on the property where the facility is located or proposed to be located. The money shall be distributed on the basis of the ratio of the total amount of taxes levied by each political subdivision to the total amount of property taxes levied by all such political subdivisions on such property based on the amounts stated in the most recent certificate of taxes levied submitted by each county to the Property Tax Administrator pursuant to section 77-1613.01.

(4) The Natural Resources Committee of the Legislature shall conduct a study to establish a formula for the equitable distribution of the funds specified in subdivision (2)(c) of this section. The committee shall hold public hearings necessary to carry out the purposes of the study.

(5) The State Treasurer shall transfer the entire balance in the Community Improvements Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

**Source:** Laws 1988, LB 1092, § 14; Laws 1989, LB 761, § 14; Laws 1993, LB 625, § 1; Laws 1994, LB 1066, § 118; Laws 1994, LB 1349, § 11; Laws 1995, LB 490, § 189; Laws 1995, LB 552, § 1; Laws 1997, LB 658, § 14; Laws 1998, LB 1174, § 2; Laws 2005, LB 426, § 20.

#### Cross References

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,113.02 Generator; failure to fulfill responsibilities; effect.**

If a generator of low-level radioactive waste fails to fulfill its financial or regulatory responsibilities under either the Central Interstate Low-Level Radioactive Waste Compact or the Low-Level Radioactive Waste Disposal Act, the wastes generated by that generator shall not be received for disposal at the facility until the obligations are fulfilled.

**Source:** Laws 1989, LB 761, § 15.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,114 Violation of Central Interstate Low-Level Radioactive Waste Compact; civil penalty.**

Any person who violates any provision of the Central Interstate Low-Level Radioactive Waste Compact shall be subject to a civil penalty of not more than ten thousand dollars per day of violation.

**Source:** Laws 1986, LB 491, § 37.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,115 Violation of Central Interstate Low-Level Radioactive Waste Compact; action to enjoin; performance compelled.**

Any person violating the provisions of the Central Interstate Low-Level Radioactive Waste Compact may be enjoined from continuing such violation. An action may also be brought to compel performance of an obligation created by the compact. The court may require any person who is adjudged responsible to do and perform any and all things within his or her power which are reasonably necessary to fulfill the obligation.

**Source:** Laws 1986, LB 491, § 38.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

**81-15,116 Violation of Central Interstate Low-Level Radioactive Waste Compact; Attorney General; duties.**

Any action for a violation of the Central Interstate Low-Level Radioactive Waste Compact or an action to enjoin a violation or to compel performance under the compact shall be brought by the Attorney General in the name of the state.

**Source:** Laws 1986, LB 491, § 39.

**Cross References**

Central Interstate Low-Level Radioactive Waste Compact, see section 71-3522.

(g) PETROLEUM PRODUCTS AND HAZARDOUS  
SUBSTANCES STORAGE AND HANDLING

**81-15,117 Act, how cited.**

Sections 81-15,117 to 81-15,127 shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

**Source:** Laws 1986, LB 217, § 1; Laws 1989, LB 289, § 31; Laws 1991, LB 409, § 20; Laws 1996, LB 1226, § 14; Laws 1998, LB 1161, § 39; Laws 2001, LB 461, § 10.

**81-15,118 Legislative findings.**

The Legislature finds that the number of leaking underground storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because substances contained in leaking storage tanks are often potential ground water contaminants and major fire and explosive hazards.

For the reasons stated in this section, the Legislature deems it necessary to provide a program of storage tank registration and inspection as a preventative measure and a comprehensive leak cleanup program as a responsive measure. Primary responsibility for the Petroleum Products and Hazardous Substances Storage and Handling Act shall be with the Department of Environmental Quality. However, preventative measures described in such act shall also be carried out by the State Fire Marshal. The State Fire Marshal's actions shall be pursuant to an interagency agreement with the department.

**Source:** Laws 1986, LB 217, § 2; Laws 1993, LB 3, § 57.

**81-15,119 Terms, defined.**

For purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, unless the context otherwise requires:

(1) Operator shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person described in subdivision (2)(b) of this section;

(2)(a) Owner shall mean:

(i) In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and

(ii) In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(b) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(i) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(ii) Acquires ownership of a tank or the property on or within which a tank is or was located:

(A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(c) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act;

(3) Permanent abandonment shall mean that a tank has been taken permanently out of service as a storage vessel for any reason or has not been used for active storage for more than one year;

(4) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, political subdivision, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank;

(5) Petroleum product shall mean any petroleum product, including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;

(6) Regulated substance shall mean any petroleum product and any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as such act existed on May 31, 2001, but not including any substance regulated as a hazardous waste under subtitle C of such act;

(7) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank or any overfilling of a tank into ground water, surface water, or subsurface soils;

(8) Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action which is reasonable and necessary;

(9) Risk-based corrective action shall mean an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment;

(10) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:

(a) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee;

(b) Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee;

(c) Septic tank;

(d) Tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor;

(e) Pipeline facility, including gathering lines:

(i) Defined under 49 U.S.C. 60101, as such section existed on May 31, 2001;  
or

- (ii) Which is an intrastate pipeline regulated under state law comparable to the law prescribed in subdivision (e)(i) of this subdivision;
- (f) Surface impoundment, pit, pond, or lagoon;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (i) Storm water or wastewater collection system; and

(11) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

**Source:** Laws 1986, LB 217, § 3; Laws 1987, LB 365, § 1; Laws 1989, LB 289, § 32; Laws 1991, LB 409, § 22; Laws 1993, LB 121, § 542; Laws 1996, LB 1226, § 15; Laws 1998, LB 1161, § 40; Laws 2001, LB 461, § 11.

**Cross References**

Uniform Fraudulent Transfer Act, see section 36-701.

**81-15,120 Farm or residential tank; heating oil storage tank; registration; when required; fee; Petroleum Products and Hazardous Substances Storage and Handling Fund; created; use; investment.**

Any farm or residential tank or tank used for storing heating oil as defined in subdivisions (10)(a) and (b) of section 81-15,119 shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently closed. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Petroleum Products and Hazardous Substances Storage and Handling Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the Department of Environmental Quality to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, including the provision of matching funds required by Public Law 99-499 for actions otherwise authorized by the act. Any money in such 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.

**Source:** Laws 1986, LB 217, § 4; Laws 1989, LB 816, § 1; Laws 1993, LB 3, § 58; Laws 1994, LB 1066, § 119; Laws 1996, LB 1226, § 16; Laws 1998, LB 1161, § 41; Laws 2001, LB 461, § 12.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,121 Tanks; permit; when required; fees; application; Underground Storage Tank Fund; created; investment.**

(1) A person shall not (a) maintain or use any tank for the storage of regulated substances, (b) install any new tank, or (c) permanently close a tank without first securing a permit from the State Fire Marshal.

(2) A fee shall not be charged for a permit under subdivision (1)(a) or (c) of this section. The fee for a permit for installation shall be fifty dollars. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund.

(3) All owners of operating tanks, except those provided for in subsection (4) of this section, shall annually register each tank. All registration permits shall expire on December 31 of the year for which the permit was issued. The registration fee shall be thirty dollars per tank. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund. Such permits shall contain the information specified in subsection (5) of this section.

(4) In the case of tanks permanently abandoned on or after January 1, 1974, an annual permit shall not be required and an initial registration permit shall be sufficient.

(5) The application for a registration permit shall be provided by and filed with the State Fire Marshal's office and shall require, but not be limited to, the following information:

- (a) The date the tank was placed in or taken out of operation;
- (b) The age of the tank;
- (c) The size, type, and location of the tank; and
- (d) The type of substances stored in the tank and the quantity of such substances remaining in the tank if the tank has been permanently closed.

(6) The registration permit fee collected pursuant to this section shall be deposited in the Underground Storage Tank Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the State Fire Marshal to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act. Any money in such 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.

**Source:** Laws 1986, LB 217, § 5; Laws 1987, LB 365, § 2; Laws 1989, LB 816, § 2; Laws 1994, LB 1066, § 120; Laws 1998, LB 1161, § 42.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

### **81-15,122 Denial of permit; procedures; appeal.**

Before the State Fire Marshal denies an application for a permit, the affected person shall be given notice and opportunity for a hearing under procedures established by the State Fire Marshal. Upon receipt of the notification, any person aggrieved by the denial or revocation of a permit may request a hearing within ten days or the decision of the State Fire Marshal shall become final. When the State Fire Marshal has reason to believe that a permit holder's activities create an immediate threat to public safety, a permit may be suspended until the hearing process is complete. Any person aggrieved by a final decision of the State Fire Marshal may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1986, LB 217, § 6; Laws 1988, LB 352, § 178.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-15,123 State Fire Marshal; rules and regulations; considerations; requirements.**

The State Fire Marshal shall adopt and promulgate rules and regulations governing release, detection, prevention, and correction procedures applicable to all owners and operators as shall be necessary to protect human health, public safety, and the environment. Such rules and regulations may distinguish between types, classes, and ages of tanks. In making such distinctions, the State Fire Marshal shall consider, but not be limited to, location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry-recommended practices, national consensus codes, hydrogeology, depth to the ground water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tanks, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated. Before adoption, such rules and regulations shall be reviewed and approved by the Director of Environmental Quality who shall determine whether the proposed rules and regulations are adequate to protect the environment. Rules and regulations adopted and promulgated pursuant to this section shall include, but not be limited to:

- (1) Proper procedures and specifications for the construction, design, installation, replacement, or repair of tanks;
- (2) A permit and registration system for all tanks;
- (3) A program to establish an inspection system for all tanks. Such program shall provide for periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal. A fee schedule may also be developed for the inspection of new tank and piping installations and tank closures in the manner prescribed in section 81-505.01. Such inspection fees shall be remitted by the State Fire Marshal to the State Treasurer for credit to the Underground Storage Tank Fund. No fee shall be charged for the periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal;
- (4) A monitoring system for all tanks which includes, but is not limited to, the following:
  - (a) An inventory-control procedure for any tank used to hold petroleum products or hazardous substances for resale;
  - (b) An inventory-control procedure for any tank used solely for consumptive onsite purposes and not for resale. Such control procedure shall determine the method of inventory measurement giving consideration to the economic burden created by the procedure. The frequency of inventory measurement for such category of tank shall include at least one measurement every thirty days;
  - (c) Provisions for the prompt reporting of any release of a regulated substance; and
  - (d) A procedure for the proper method of monitoring tanks;
- (5) A procedure for notifying the State Fire Marshal of temporarily or permanently abandoned tanks;

(6) A procedure for removing or making safe any abandoned tanks, except that the State Fire Marshal may dispense with such procedure in special circumstances;

(7) Financial responsibility requirements, taking into account the financial responsibility requirements established pursuant to 42 U.S.C. 6991b(d);

(8) Requirements for maintaining a leak-detection system, an inventory-control system, and a tank-testing or comparable system or method designed to identify releases in a manner consistent with the protection of human health, public safety, and the environment;

(9) Requirements for maintaining records of any monitoring or leak-detection system, inventory-control system, or tank-testing or comparable system;

(10) Provisions to establish a system for licensing tank installation and removal contractors;

(11) Provisions to prohibit delivery to, deposit into, or the acceptance of a regulated substance into, an underground storage tank at a facility which has been identified by the State Fire Marshal to be ineligible for such delivery, deposit, or acceptance; and

(12) Effective August 8, 2009, requirements for training and certification of operators.

Nothing in this section shall be construed to require a subcontractor working under the direction of a licensed installation or removal contractor to be licensed.

**Source:** Laws 1986, LB 217, § 7; Laws 1989, LB 816, § 3; Laws 1991, LB 409, § 23; Laws 1993, LB 3, § 59; Laws 1993, LB 720, § 1; Laws 2007, LB390, § 1.

**81-15,124 Release of regulated substance; Department of Environmental Quality; State Fire Marshal; powers and duties; remedial action plan.**

Any reported or suspected release of a regulated substance from any tank shall be investigated consistent with principles of risk-based corrective action by the State Fire Marshal and the Department of Environmental Quality. In the event that the State Fire Marshal or the department finds an adverse effect caused by a release of a regulated substance from a tank:

(1) The State Fire Marshal shall (a) determine the immediate danger presented by the release, (b) take all steps necessary to assure immediate public safety, and (c) assist the department in determining the source of the release and taking all steps necessary to ensure that the release is halted;

(2) By order of the department, the owner or operator of the tank causing the release shall, after securing the source of the release, develop a plan for remedial action to be approved by the department. The department shall inform the owner or operator of its approval or disapproval of a plan for remedial action within one hundred twenty days after receipt of a remedial action plan which contains all 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; and

(3) The approved remedial action plan shall then be carried out by the owner or operator of the tank causing the release. All expenses incurred during the

remedial action shall be paid by the owner or operator subject to reimbursement pursuant to the Petroleum Release Remedial Action Act.

If it is determined that the source of the release is unknown or that the owner or operator of the facility causing the release is unknown or unavailable, a remedial action plan shall be developed by or under the direction of the department. Such remedial action plan shall be developed and carried out by the department with money from the Petroleum Products and Hazardous Substances Storage and Handling Fund if funds are available. If at a later date the owner or operator of the facility which caused the release is determined, he or she shall be responsible for remedial action costs incurred on his or her behalf subject to reimbursement pursuant to the Petroleum Release Remedial Action Act. Any money received from such person shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund.

**Source:** Laws 1986, LB 217, § 8; Laws 1989, LB 289, § 33; Laws 1993, LB 3, § 60; Laws 1993, LB 237, § 5; Laws 1998, LB 1161, § 43.

**Cross References**

**Petroleum Release Remedial Action Act**, see section 66-1501.

**81-15,124.01 Environmental Quality Council; rules and regulations.**

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank. Such rules and regulations shall include:

(a) Provisions governing remedial action to be taken by owners and operators pursuant to section 81-15,124;

(b) Provisions by which the Department of Environmental Quality may determine the cleanup levels to be achieved through soil or water remediation and the applicable limitations for air emissions at the petroleum release site or occurring by reason of such remediation; and

(c) Such other provisions necessary to carry out the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) In developing rules and regulations, the Environmental Quality Council shall take into account (a) risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action applicable to petroleum release sites and (b) rules and regulations proposed by the technical advisory committee established in section 81-15,189.

**Source:** Laws 1989, LB 289, § 34; Laws 1993, LB 3, § 61; Laws 1996, LB 1226, § 18; Laws 1998, LB 1161, § 44.

**81-15,124.02 Access to property.**

If necessary in the course of an investigation or inspection or during the remedial action and if the owner of property or the owner's agent has specifically denied the Department of Environmental Quality access to the property for such purposes, the department may order the owner or owner's

agent to grant access to property for the performance of reasonable steps, including drilling, to determine the source and extent of contamination or for remediation. Access shall be by the department or by a person conducting an investigation, inspection, or remedial action at the direction of the department. All actions taken on the property shall be performed in the least obtrusive manner possible to allow the investigation, inspection, or remedial action to proceed. Upon completion of any such actions, the property shall be restored as nearly as possible to its original condition.

**Source:** Laws 1991, LB 409, § 21; Laws 1993, LB 3, § 62.

**81-15,124.03 Remedial action plan; considerations.**

The plan for remedial action shall take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials standards.

**Source:** Laws 1996, LB 1226, § 17.

**81-15,124.04 Risk-based corrective action; department provide briefing.**

The Department of Environmental Quality shall provide briefing on the use by the department of risk-based corrective action. The briefing shall be directed toward comprehension and knowledge of the use by the department of risk-based corrective action, and a fee may be charged for attending the briefing which shall be remitted to the State Treasurer for credit to the Petroleum Release Remedial Action Cash Fund. The department may contract for providing such briefing and shall maintain and make available to the public a list of attendees.

**Source:** Laws 1998, LB 1161, § 45.

**81-15,124.05 Remedial action plan; certificate of completion; form; effect.**

(1) If a remedial action plan submitted by a responsible person as defined in section 66-1514 is approved or deemed to be approved by the Department of Environmental Quality pursuant to subdivision (2) of section 81-15,124 and has been carried out, the department may issue to the responsible person a certificate of completion stating that no further remedial action needs to be taken at the site relating to any contamination for which remedial action has already been taken in accordance with the approved remedial action plan. The department shall condition the certificate of completion upon compliance with any monitoring, institutional, or technological controls that may be necessary and which were relied upon by the responsible person to demonstrate compliance with the remedial action plan. Any certificate of completion issued pursuant to this section shall be in a form which can be filed for record in the real estate records of the county in which the remedial action took place. The responsible person shall file the certificate of completion and notify the department within ten days after issuance as to the date and location of the real estate filing. If the department issues a certificate of completion to a responsible person under this section, a covenant not to sue shall arise by operation of law subject to subsection (2) of this section. The covenant not to sue releases the responsible person from liability to the state and from liability to perform

additional environmental assessment, remedial activity, or response action with regard to the release of a petroleum product for which the responsible person has complied with the requirements of this subsection. The covenant not to sue shall be voided if the responsible person fails to conduct additional remedial action as required under subsection (2) of this section, if a certificate of completion is revoked by the department under subsection (3) of this section, or if the responsible person fails to comply with the monitoring, institutional, or technological controls, if any, upon which the certificate of completion is conditioned.

(2) A certificate of completion issued by the department under subsection (1) of this section shall require the responsible person to conduct additional remedial action in the event that any monitoring conducted at or near the real property or other circumstances indicate that (a) contamination is reoccurring, (b) additional contamination is present for which remedial action was not taken according to the remedial action plan, or (c) contamination from the site presents a threat to human health or the environment and was not addressed in the remedial action plan.

(3) A certificate of completion shall be revoked if the department demonstrates by a preponderance of the evidence that any approval provided under this section was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department. The department shall file a copy of the notice of revocation of any certificate of completion in the real estate records of the county in which the remedial action took place within ten days after such revocation.

(4) If a responsible person transfers property to an affiliate in order for that affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this section or to avoid an obligation under this section, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this section.

(5)(a) A covenant not to sue arising under subsection (1) of this section, unless voided pursuant to such subsection, shall bar suit against any person who acquires title to property to which a certificate of completion applies for all claims of the state or any other person in connection with petroleum products which were the subject of an approved remedial action plan and (b) a person who purchased a site before May 31, 2001, is released, upon the issuance of a certificate of completion under this section or upon the issuance of a no further action letter on or after May 31, 2001, pursuant to section 81-15,186, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate of completion or the no further action letter before the purchase date, except as provided in subsection (4) of this section, for releases or consequences that the person contributed to or caused, for failure by such person to comply with the monitoring, institutional, or technological controls, if any, upon which the certificate of completion is conditioned, or in the event the certificate of completion is revoked by the department under subsection (3) of this section.

(6) Any person entitled to the protections of the covenant not to sue or eligible to be released from liability pursuant to the issuance of a certificate of completion or a no further action letter under subsection (5) of this section who is ordered by the department to take remedial action shall be eligible for reimbursement as a responsible person pursuant to section 66-1525 and shall

not be required to pay the first cost or percent of the remaining cost as provided in subsection (1) of section 66-1523 unless such person contributed to or caused the release or failed to comply with the monitoring, institutional, or technological controls, if any, imposed under subsection (1) of this section.

**Source:** Laws 2001, LB 461, § 13.

**81-15,124.06 Remedial action plan; certificate of completion; immunity.**

Upon issuance of a certificate of completion under section 81-15,124.05, except as otherwise provided in such section, the responsible person shall no longer have liability to the state as to the release of petroleum products for which compliance with the remedial action plan is demonstrated by the responsible person.

**Source:** Laws 2001, LB 461, § 14.

**81-15,124.07 Remedial action plan; participation; effect.**

(1) Participating in a remedial action plan does not constitute an admission of liability under the laws of this state, the rules and regulations adopted pursuant to law, or the ordinances and resolutions of any political subdivision or an admission of civil liability under statutory or common law of this state.

(2) The fact that a responsible person has participated in a remedial action plan is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce sections 81-15,124.05 to 81-15,124.07.

(3) Participating in a remedial action plan shall not be construed to be an acknowledgment that the conditions of the affected area identified and addressed by the remedial action plan constitute a threat or danger to the public health or safety or the environment.

**Source:** Laws 2001, LB 461, § 15.

**81-15,125 Violation; penalty.**

Any person violating the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders of the State Fire Marshal or the Department of Environmental Quality adopted or issued pursuant to such act shall be subject to a civil fine of not more than five thousand dollars for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the size of the operation and the degree and extent of the pollution.

**Source:** Laws 1986, LB 217, § 9; Laws 1993, LB 3, § 63.

**81-15,126 Violation; action to enjoin.**

The Department of Environmental Quality or the State Fire Marshal may apply to the district court of the county where the violation is occurring or about to occur for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders adopted and promulgated under the act. The court shall have jurisdiction to grant relief upon good cause shown. Relief may

be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

**Source:** Laws 1986, LB 217, § 10; Laws 1993, LB 3, § 64.

**81-15,127 Notice of registration requirements; duty to provide.**

(1) Any person who deposits regulated substances in a tank shall reasonably notify the owner or operator of such tank of the owner's or operator's registration requirements pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) The Department of Environmental Quality shall design and make available a printed notice of registration for owners of tanks to any person who deposits regulated substances in a tank.

**Source:** Laws 1986, LB 217, § 11; Laws 1993, LB 3, § 65.

(h) WASTEWATER TREATMENT OPERATOR CERTIFICATION ACT

**81-15,128 Act, how cited.**

Sections 81-15,128 to 81-15,143 shall be known and may be cited as the Wastewater Treatment Operator Certification Act.

**Source:** Laws 1987, LB 533, § 1.

**81-15,129 Terms, defined.**

As used in the Wastewater Treatment Operator Certification Act, unless the context otherwise requires:

(1) Certificate shall mean a certificate of competency issued by the director or his or her duly authorized representative certifying that the operator has met the requirements for the specified operator classification of the certification program;

(2) Council shall mean the Environmental Quality Council;

(3) Department shall mean the Department of Environmental Quality;

(4) Director shall mean the Director of Environmental Quality;

(5) Nationally recognized association of certification authorities shall mean an organization or organizations selected by the director which (a) serve as an information center for certification activities, (b) recommend minimum standards and guidelines for classification of wastewater treatment facilities and certification of operators, (c) facilitate reciprocity between state programs, (d) assist authorities in establishing new certification programs and updating existing ones, and (e) provide testing services;

(6) Operator shall mean any person who regularly makes recommendations or is responsible for process control decisions at a wastewater treatment facility. Operator shall not include a person whose duties are limited solely to laboratory testing or maintenance or who exercises general or indirect supervision only;

(7) Voluntarily certified operator shall mean an operator who holds a certificate of competency described in section 81-15,133; and

(8) Wastewater treatment facility shall mean the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludge.

**Source:** Laws 1987, LB 533, § 2; Laws 1993, LB 3, § 66.

**81-15,130 Council; adopt rules and regulations; contents.**

In order to carry out the purposes of the Wastewater Treatment Operator Certification Act, the council shall adopt and promulgate rules and regulations. Such rules and regulations shall include, but not be limited to:

(1) Establishing and carrying out procedures for the certification program provided for in the act;

(2) Classification of wastewater treatment facilities. Such classification shall be based on the size and type of wastewater treatment facility, the quality and quantity of wastewater to be treated, and other physical, chemical, and biological conditions affecting such treatment facilities and according to the skill, knowledge, and experience that the operator must have to supervise successfully the operation of the facilities so as to protect the public health and to protect the waters of the state;

(3) A procedure to be carried out by the department to receive applications and examine the qualifications of applicants for certification;

(4) Development of a training and continuing educational program including regular training schools, short courses, conferences, and programs. The council shall adopt procedures and minimum requirements for the approval of correspondence courses, required classroom instruction, and minimum attendance standards to maintain certification;

(5) Requirements for the maintenance of records of the classification of wastewater treatment facilities;

(6) Distribution of applications and notices of examinations;

(7) Procedures in the department for preparing, conducting, and grading examinations either by the department or by its representatives or persons conducting approved training schools, short courses, conferences, and programs, including correspondence courses;

(8) A fee schedule to be implemented by the department which shall include a fee designed to cover direct and indirect costs associated with applicant's certification but not to exceed three hundred dollars per application. Fees may also be charged by the department for each educational program to be paid by the participant. Such fee shall be an amount necessary to cover program costs;

(9) Procedures and requirements to allow the director to issue temporary certificates as provided in section 81-15,135; and

(10) Provisions for granting exemptions to operators of individual septic tank systems, nondischarging lagoon systems, and other disposal systems as determined by the council.

**Source:** Laws 1987, LB 533, § 3; Laws 2007, LB161, § 1.

**81-15,131 Director; powers and duties.**

The director shall have authority to exercise all incidental powers necessary to carry out the purposes of the Wastewater Treatment Operator Certification Act. In carrying out such powers the director shall advise, consult, and

cooperate with agencies of the state, the federal government, other states, interested groups, political subdivisions, and industries.

**Source:** Laws 1987, LB 533, § 4.

**81-15,132 Operator certification without examination; recommended by governing body or owner.**

The director may provide for certification without examination of any operator recommended by a governing body or owner as having been in charge of the operation or supervising the operation of a wastewater treatment facility on August 30, 1987, and whose competence has been demonstrated. Certificates issued under this section shall be valid for a period of four years from August 30, 1987. After such four-year period, certificates granted under this section shall no longer be valid, and such operators shall become fully certified under the Wastewater Treatment Operator Certification Act.

**Source:** Laws 1987, LB 533, § 5.

**81-15,133 Operator certification without examination; holder of certificate of competency.**

The director shall provide for certification without examination of operators who, on August 30, 1987, hold certificates of competency issued pursuant to a program which the director determines meets the requirements of the Wastewater Treatment Operator Certification Act.

**Source:** Laws 1987, LB 533, § 6.

**81-15,134 Wastewater treatment facilities; supervision required; exceptions.**

Within two years following August 30, 1987, all wastewater treatment facilities shall be under the supervision of an operator certified by the director at least to the level of classification of the wastewater treatment facility to be supervised by such operator, except that individual septic tank systems and individual wastewater treatment lagoons for domestic wastewater treatment shall be exempt from the Wastewater Treatment Operator Certification Act. No operator shall be required to be certified in a classification other than that corresponding to the classification of the wastewater treatment facility to be supervised by the operator.

**Source:** Laws 1987, LB 533, § 7.

**81-15,135 Temporary certificate.**

The director shall have the authority to issue a temporary certificate to an operator of a wastewater treatment facility which relies on the services of one person for its operation. A temporary certificate shall be valid for a period of one year after which time such operator shall be required to become fully certified under the Wastewater Treatment Operator Certification Act.

**Source:** Laws 1987, LB 533, § 8.

**81-15,136 Certificate; revoke, suspend, or refuse; grounds.**

The director may revoke, suspend, or refuse to grant the certificate of an operator, following opportunity for hearing, upon any reasonable ground including, but not limited to, the following: (1) The operator has practiced fraud or deception; (2) reasonable care was not used in the performance of duties;

(3) the operator is unable to perform duties properly; or (4) for failure to maintain the minimal continuing education requirements of the Wastewater Treatment Operator Certification Act.

**Source:** Laws 1987, LB 533, § 9.

**81-15,137 Hearings; procedures applicable.**

All hearings shall be conducted in accordance with procedures established in section 81-1507.

**Source:** Laws 1987, LB 533, § 10.

**81-15,138 Certificate; term; renewal.**

Certificates shall expire two years from the date of issuance and shall be renewed by the director if the applicant has met minimum continuing education requirements and if other provisions of section 81-15,136 do not apply. Operators shall be given sixty days' notice prior to expiration of their certificates and shall have a ninety-day period after such expiration to renew their certificates.

**Source:** Laws 1987, LB 533, § 11.

**81-15,139 Certification required; when.**

On and after two years following August 30, 1987, unless the director determines that an emergency exists, it shall be unlawful for any wastewater treatment facility to be operated unless its operator is duly certified under the Wastewater Treatment Operator Certification Act at the level of classification of the facility to be operated.

**Source:** Laws 1987, LB 533, § 12.

**81-15,140 Reciprocal certification agreements; director; duties.**

(1) The director shall provide for reciprocal certification agreements with other states, territories, and countries if the requirements for certification by such other states, territories, and countries do not conflict with the Wastewater Treatment Operator Certification Act and are as stringent as those required by this state.

(2) In making determinations pursuant to subsection (1) of this section, the director may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities.

**Source:** Laws 1987, LB 533, § 13.

**81-15,141 Violation; penalty.**

Any person violating any provisions of the Wastewater Treatment Operator Certification Act or the rules and regulations adopted and promulgated pursuant to such act shall be subject to a civil fine of not more than five hundred dollars for each offense, and in the case of a continuing violation, each day of violation shall constitute a separate offense.

**Source:** Laws 1987, LB 533, § 14.

**81-15,142 Appeal.**

Any person aggrieved by an order or decision of the director may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1987, LB 533, § 15; Laws 1988, LB 352, § 179.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-15,143 Wastewater Treatment Operator Certification Cash Fund; created; use; investment.**

All fees collected pursuant to the Wastewater Treatment Operator Certification Act shall be remitted to the State Treasurer for credit to the Wastewater Treatment Operator Certification Cash Fund which is hereby created. Such fund shall be administered by the department for the purposes of the act. Any money in the 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.

**Source:** Laws 1987, LB 533, § 16; Laws 1995, LB 7, § 128.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

(i) MOTOR VEHICLE EXHAUST EMISSIONS

**81-15,144 Repealed. Laws 1993, LB 3, § 74.**

**81-15,145 Repealed. Laws 1993, LB 3, § 74.**

(j) SOLID WASTE DISPOSAL SITES

**81-15,146 Repealed. Laws 1993, LB 3, § 74.**

(k) WASTEWATER TREATMENT FACILITIES  
CONSTRUCTION ASSISTANCE ACT

**81-15,147 Act, how cited.**

Sections 81-15,147 to 81-15,158 shall be known and may be cited as the Wastewater Treatment Facilities Construction Assistance Act.

**Source:** Laws 1988, LB 766, § 1; Laws 1989, LB 311, § 7.

**81-15,148 Legislative findings.**

The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality, that protecting water quality is an issue of concern to all citizens of the state, that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development, and that the amount of needed assistance which may be provided to municipalities or counties for wastewater treatment purposes can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue

bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds that construction, rehabilitation, operation, and maintenance of nonpoint source control systems are essential to water quality protection, that such systems are financially burdensome to municipalities and counties, and that the amount of needed assistance which may be provided to municipalities or counties for nonpoint source control systems can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for the purpose of financing the fund serves a public purpose by assisting municipalities or counties in providing and improving wastewater treatment facilities and nonpoint source control systems and thereby providing clean water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state and its political subdivisions. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

**Source:** Laws 1988, LB 766, § 2; Laws 1989, LB 311, § 8; Laws 1994, LB 1139, § 38; Laws 1996, LB 1226, § 21.

**81-15,149 Terms, defined.**

As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of wastewater treatment works or nonpoint source control systems; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works or nonpoint source control systems; or the inspection or supervision of any of the foregoing items;

(3) Council means the Environmental Quality Council;

(4) County means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department means the Department of Environmental Quality;

(6) Fund means the Wastewater Treatment Facilities Construction Loan Fund;

(7) Municipality means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(8) Nonpoint source control systems means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to,

structural and nonstructural controls and operation and maintenance procedures applied before, during, and after pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition;

(9) Operate and maintain means all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works or nonpoint source control systems in accordance with its intended purpose; and

(10) Wastewater treatment works means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

**Source:** Laws 1988, LB 766, § 3; Laws 1993, LB 3, § 67; Laws 1994, LB 1139, § 39; Laws 1996, LB 1226, § 22; Laws 2003, LB 164, § 1; Laws 2004, LB 916, § 27.

**Cross References**

County Industrial Sewer Construction Act, see section 23-3601.

**81-15,150 Federal grants; director; powers.**

The director may obligate and administer any federal grants to municipalities and counties for construction of publicly owned wastewater treatment works or nonpoint source control systems pursuant to the Clean Water Act.

**Source:** Laws 1988, LB 766, § 4; Laws 1994, LB 1139, § 40; Laws 1996, LB 1226, § 23.

**81-15,151 Wastewater Treatment Facilities Construction Loan Fund; transfers authorized; Construction Administration Fund; created; use; investment.**

(1) The Wastewater Treatment Facilities Construction Loan Fund is hereby created. The fund shall be held as a trust fund for the purposes and uses described in the Wastewater Treatment Facilities Construction Assistance Act.

The fund shall consist of federal capitalization grants, state matching appropriations, repayments of principal and interest on loans, and other money designated for the fund. The Director of Environmental Quality may make loans from the fund pursuant to the act and may use up to four percent of all federal capitalization grant awards to the fund for the reasonable cost of administering the fund and conducting activities under Title VI of the federal Clean Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated

pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

Prior to December 31, 1996, money or obligations from the Petroleum Release Remedial Action Cash Fund may be transferred to or deposited in the Wastewater Treatment Facilities Construction Loan Fund as designated by the Director of Environmental Quality. Prior to December 31, 1996, the fund and the assets thereof, including federal capitalization grants, not otherwise pledged for inconsistent purposes may be, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, in whole or in part transferred to or invested in obligations of the Petroleum Release Remedial Action Cash Fund at the direction of the director in a manner consistent with section 66-1519.01.

(2) There is hereby created the Construction Administration Fund. Any funds available for administering loans or fees collected pursuant to the Wastewater Treatment Facilities Construction Assistance Act shall be deposited in such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Clean Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (10), and (11) of section 81-15,153. The annual obligation of the state pursuant to subdivisions (9) and (11) of such section shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to this section in the prior fiscal year.

The director may transfer any money in the Construction Administration Fund to the Wastewater Treatment Facilities Construction Loan Fund to meet the nonfederal match requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 81-15,153.

**Source:** Laws 1988, LB 766, § 5; Laws 1989, LB 623, § 1; Laws 1989, LB 311, § 9; Laws 1993, LB 3, § 68; Laws 1994, LB 1066, § 121; Laws 1996, LB 1226, § 24; Laws 2008, LB726, § 1.  
Effective date July 18, 2008.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-15,151.01 Obligation to repay loan; effect.**

If funds are loaned to or otherwise deposited in the Wastewater Treatment Facilities Construction Loan Fund with an obligation to repay such loan or deposit, the obligation to repay the amount of the loan or deposit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or deposit, be a valid and binding obligation of the fund and payable in accordance with the terms of the agreement executed by the department.

**Source:** Laws 1989, LB 311, § 12.

**81-15,151.02 Pledge of fund or assets; effect.**

Any pledge of the Wastewater Treatment Facilities Construction Loan Fund or any part thereof or any pledge of the assets of the fund made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and thereafter received by the fund shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the fund or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1989, LB 311, § 13.

**81-15,152 Council; powers and duties.**

The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt and promulgate rules and regulations to govern types of nonpoint source control system projects which will be eligible for loans and to adopt a system for priority ranking of such projects;

(4) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality or a county demonstrates a serious financial hardship. The system may allow discounted interest rates for short-term loans. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act;

(6) The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county;

(7) Except as limited by section 81-15,151, the power to obligate the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or deposits into the fund, including bonds, the proceeds of which are deposited into the fund; and

(8) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements, including any funding caps and cost-

share requirements, for grants pursuant to subdivision (10) of section 81-15,153.

**Source:** Laws 1988, LB 766, § 6; Laws 1989, LB 623, § 2; Laws 1989, LB 311, § 10; Laws 1994, LB 1139, § 41; Laws 1996, LB 1226, § 25; Laws 2000, LB 1234, § 14.

**81-15,153 Department; powers and duties.**

The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities or to counties, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power to establish a program to make loans to municipalities or to counties for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(3) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(4) The duty to prepare an annual report for the Governor and the Legislature containing information which shows the financial status of the program;

(5) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the fund;

(c) Accounting for disbursements made by the fund; and

(d) Balancing the fund at the beginning and end of the accounting period;

(6) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(7) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(9) The power to enter into agreements to provide grants concurrent with loans to municipalities with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may authorize grants for up to one-half of the eligible project cost. Such grants shall contain a

provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to authorize emergency grants to municipalities with wastewater treatment facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grants shall not be used for routine repair or maintenance of facilities;

(11) The power to provide financial assistance to municipalities with populations of ten thousand inhabitants or less for completion of engineering studies, research projects, investigating low-cost options for achieving compliance with the Clean Water Act, encouraging wastewater reuse, and conducting other studies for the purpose of enhancing the ability of communities to meet the requirements of the Clean Water Act. The department may authorize financial assistance for up to ninety percent of the eligible project cost. Such state allocation shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(12) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

**Source:** Laws 1988, LB 766, § 7; Laws 1989, LB 311, § 11; Laws 1993, LB 3, § 69; Laws 1994, LB 1139, § 42; Laws 1996, LB 1226, § 26; Laws 2000, LB 1234, § 15; Laws 2003, LB 164, § 2; Laws 2008, LB726, § 2.

Effective date July 18, 2008.

**81-15,154 Categories of loan eligibility; eligible items.**

Categories of loan eligibility shall include: Secondary or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; land integral to the treatment process; correction of combined sewer overflows; and nonpoint source control systems. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, land, easements, and rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

**Source:** Laws 1988, LB 766, § 8; Laws 1989, LB 623, § 3; Laws 1994, LB 1139, § 43; Laws 1996, LB 1226, § 27.

**81-15,155 Loans to municipalities or counties; conditions.**

(1) All loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

- (a) Meet the requirements of financial capability set by the department;
- (b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;
- (c) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;

(d) Provide a written assurance, signed by an attorney, that the municipality or county has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works or nonpoint source control systems is to be constructed or extended;

(e) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(f) Provide a written notice of completion and start of operation of the facility; and

(g) Employ a professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

(2) Loans made under the act for the construction, rehabilitation, operation, and maintenance of wastewater treatment works shall be made only to municipalities or to counties which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;

(b) Provide capacity for twenty years domestic and industrial growth or reasonable capacity as determined by the department;

(c) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years; and

(d) Provide a certified operator pursuant to voluntary or mandatory certification program, whichever is in effect.

**Source:** Laws 1988, LB 766, § 9; Laws 1994, LB 1139, § 44; Laws 1996, LB 1226, § 28; Laws 1997, LB 622, § 125.

**81-15,156 Loan terms.**

Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after the date of completion of the project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

**Source:** Laws 1988, LB 766, § 10.

**81-15,157 Loans; procedures for granting.**

Loans shall be granted for projects in accordance with the procedures established through the state's continuing planning process pursuant to sections 205(j), 208, 303(e), and 320 of the Clean Water Act and for projects listed on the state's priority list under section 216 of the Clean Water Act.

**Source:** Laws 1988, LB 766, § 11.

**81-15,158 Municipality or county; failure to make payment; effect.**

If a municipality or county fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities or counties to which the municipality or county is entitled under sections 77-27,136 to 77-27,137.01. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund.

**Source:** Laws 1988, LB 766, § 12; Laws 1989, LB 623, § 4; Laws 1994, LB 1139, § 45.

(I) WASTE REDUCTION AND RECYCLING

**81-15,158.01 Act, how cited.**

Sections 81-15,158.01 to 81-15,165 shall be known and may be cited as the Waste Reduction and Recycling Incentive Act.

**Source:** Laws 1994, LB 1034, § 4; Laws 1997, LB 495, § 6.

**81-15,159 Legislative findings and intent; state purchases; preference requirements.**

(1) The Legislature hereby finds and declares that:

(a) Some landfills operating with or without a permit in Nebraska exhibit numerous operational and management practices which are inconsistent with proper landfill management and permit requirements, and the owners and operators of such landfills should be encouraged to cooperate and work with the Department of Environmental Quality to ensure that the air, land, and water of this state are not polluted;

(b) Some landfills in Nebraska are reaching capacity and the siting of a new location can be a financially expensive and socially disruptive process, and because of this situation all Nebraska citizens and businesses are encouraged to implement waste reduction measures that will result in a reduction of waste entering landfills by at least twenty-five percent;

(c) Recycling and waste reduction are necessary components of any well-managed waste management system and can extend the lifespan of a landfill and provide alternative waste management options; and

(d) The state can encourage recycling by the example of its own purchase and use of recycled and recyclable materials. The state can also encourage recycling and waste reduction by the creation of funding grants which support existing and future waste management systems.

(2) It is the intent of the Legislature that the state, as a major consumer and an example for others, should assist resource recovery by making a concerted effort to use recyclable and recycled products and encourage other levels of government and the private sector to follow its example. When purchasing products, materials, or supplies for use by the State of Nebraska, the Department of Administrative Services, the University of Nebraska, and any other state agency making such purchases shall give preference to and purchase products, materials, and supplies which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference shall also be given to the purchase of corn-based biodegradable plastics and road deicers, depending on the availability and suitability of such products. Such preference shall not operate when it would result in the

purchase of products, materials, or supplies which are of inadequate quality or substantially higher cost.

**Source:** Laws 1990, LB 163, § 1; Laws 1992, LB 1257, § 94.

**81-15,159.01 Repealed. Laws 2003, LB 143, § 15.**

**81-15,159.02 Terms, defined.**

For purposes of the Waste Reduction and Recycling Incentive Act:

- (1) Council means the Environmental Quality Council;
- (2) Department means the Department of Environmental Quality;
- (3) Director means the Director of Environmental Quality;
- (4) Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;
- (5) Tire means any tire made of rubber or other resilient material and normally used on any vehicle;
- (6) Tire-derived product means the usable product produced from a scrap tire. Tire-derived product does not include crumb rubber or chipped tires not intended for a direct end use and does not include baled tires or tire-derived fuel; and
- (7) Tire retailer means a person, business, or other entity which engages in the retail sale of tires in any quantity for any use or purpose by the purchaser other than for resale.

**Source:** Laws 1994, LB 1034, § 6; Laws 1997, LB 495, § 8; Laws 2003, LB 143, § 10.

**81-15,160 Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.**

(1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

- (a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;
- (b) Recycling and waste reduction projects, including public education, planning, and technical assistance;
- (c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;
- (d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;
- (e) Programs which develop and implement composting of yard waste and composting with sewage sludge;
- (f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs; and

(h) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel.

The State Treasurer shall transfer two million one hundred thousand dollars from the Waste Reduction and Recycling Incentive Fund to the General Fund within five days after August 16, 2002.

(3) Grants up to one million dollars annually shall be available until June 30, 2009, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

(b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost, except that persons who applied for a grant between June 1, 1999, and May 31, 2001, for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content may apply for reimbursement on or before July 1, 2002. Reimbursement shall not exceed twenty-five percent of the product's retail cost and may be funded in fiscal years 2001-02 and 2002-03;

(c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection and disposal sites.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(4) Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

(5) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Any money in the 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.

**Source:** Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec. Sess., LB 1, § 7; Laws 2003, LB 143, § 11; Laws 2007, LB568, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**81-15,161 Waste Reduction and Recycling Incentive Fund; grants; application; contents; director and council; duties; rules and regulations.**

(1) Allocations from the Waste Reduction and Recycling Incentive Fund may be made as grants to a political subdivision or other entity or organization, public, private, or nonprofit, when it is found that the proposed program, project, or study appears to benefit the general public, to further the goals of waste reduction and recycling, and to be consistent with proper waste management practices. Each application for a grant under the Waste Reduction and Recycling Incentive Act shall be filed with the department in a manner and form prescribed by the department.

(2) The council shall adopt guidelines for the determination of eligibility of public, private, and nonprofit entities, organizations, or persons to receive funds pursuant to the act and for the determination of qualification and suitability of plans submitted by such entities, organizations, and persons consistent with the act.

(3) An application for a grant shall: (a) Describe the nature and purpose of the proposed program, project, or study; (b) set forth or be accompanied by a plan for development of the proposed program, project, or study, together with engineering, economic, and financial feasibility data and information and such estimated costs of construction or implementation as may be required by the department; (c) state whether money other than that for which the application

is made will be used to help in meeting program, project, or study costs and whether such money is available or has been sought for this purpose; (d) when appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands; (e) show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or study; and (f) demonstrate the probable environmental and ecological consequences that may result from the proposed program or project. Upon receipt of an application the director shall evaluate and investigate all aspects of the proposed program, project, or study and the proposed schedule for the development and completion of such program, project, or study and determine the eligibility of the program, project, or study for funding. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or study is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make recommendations to the applicant which the director considers necessary to make the plan or the application satisfactory.

(4) The director shall within a reasonable time, not to exceed six months, after receipt of such application approve or reject grant funding for the program, project, or study. The grant shall be for a specific dollar amount of funds, and the funds shall be used only for the purpose specified in the grant. The director may set any terms for the administration of the funds as he or she deems necessary and any penalties to be imposed upon the recipient if it fails to comply with any requirements of the grant.

(5) It is the intent of the Legislature that allocations from the Waste Reduction and Recycling Incentive Fund shall be made in an equitable manner which maximizes the benefits of the fund. When awarding grants, the director shall balance the needs of: (a) All geographic areas of the state; (b) all sizes and classes of communities; and (c) all manner and scale of programs, projects, and studies. The director shall also give consideration to eligible programs, projects, and studies which would specifically employ disabled or handicapped persons.

(6) The director may deny any application which he or she determines (a) is not in conformance with this section, (b) does not reflect reasonable costs for the type of project proposed, (c) contains inaccurate, incomplete, or misleading information in the application, or (d) would require the expenditure of funds beyond the fund's unobligated balance or for any other reason which the director determines is necessary to properly administer this section.

(7) All disbursements made under this section shall be formalized by a written agreement between the department and all recipients of the disbursement. The agreement may include, but need not be limited to, the following conditions designed to protect the fund and ensure completion of the project: (a) Mechanics of funding disbursement; (b) any bidding requirements; (c) completion timelines for any deliverables; (d) record-keeping and reporting requirements; (e) security interest and insurance requirements on equipment; (f) forfeiture and repayment of funds; and (g) other conditions necessary or desirable to carry out this section.

(8) The council shall adopt and promulgate rules and regulations to carry out the Waste Reduction and Recycling Incentive Act.

**Source:** Laws 1990, LB 163, § 3; Laws 1991, LB 325, § 1; Laws 1993, LB 3, § 70; Laws 1993, LB 444, § 2; Laws 1994, LB 1034, § 8; Laws 1997, LB 495, § 10; Laws 2003, LB 143, § 12.

**81-15,161.01 Repealed. Laws 2003, LB 143, § 15.**

**81-15,162 Fees on tires; collection; disbursement.**

(1) There is hereby imposed a fee of one dollar on each tire of every new motor vehicle, trailer, or semitrailer sold at retail in this state. Such fee shall be collected by the county treasurer at the time of registration of the motor vehicle, trailer, or semitrailer and remitted to the Department of Revenue.

(2) There is hereby imposed a fee of one dollar on every tire sold at retail in this state, including every farm tractor tire, which tires are not on a motor vehicle, trailer, or semitrailer pursuant to subsection (1) of this section. Such fee shall be collected from the purchaser by the tire retailer at the time of purchase and shall be remitted to the Department of Revenue.

(3) For purposes of this section, tire shall have the definition found in section 81-15,159.02 and shall include a pneumatic and solid tire but shall not include a recapped or regrooved tire.

(4) Subject to section 81-15,165, the fees remitted to the Department of Revenue under this section shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. Fees collected in excess of one million dollars shall be available for grants to political subdivisions under rules and regulations adopted pursuant to subsection (7) of section 13-2042.

**Source:** Laws 1990, LB 163, § 4; Laws 1994, LB 1034, § 10; Laws 1999, LB 592, § 4; Laws 2003, LB 143, § 13.

**81-15,162.01 Repealed. Laws 2003, LB 143, § 15.**

**81-15,162.02 Repealed. Laws 2003, LB 143, § 15.**

**81-15,162.03 Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.04 Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.05 Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.06 Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.07 Grant recipients; reports required.**

The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by recipients to ensure that the purposes of the Waste Reduction and Recycling Incentive Act are achieved.

**Source:** Laws 1994, LB 1034, § 17; Laws 1997, LB 495, § 13.

**81-15,162.08 Repealed. Laws 2003, LB 143, § 15.**

**81-15,163 Annual waste reduction and recycling fee; amount; collection.**

There is hereby imposed an annual waste reduction and recycling fee of twenty-five dollars on all businesses engaged in business in this state with retail sales of tangible personal property of fifty thousand dollars or more, which sales are subject to the tax imposed by the Nebraska Revenue Act of 1967. For all fee periods beginning on or after July 1, 1999, the twenty-five-dollar fee shall be paid for each business location of such business in this state if the retail sales of tangible personal property for the location are fifty thousand dollars or more. Subject to section 81-15,165, the fee shall be collected by the Department of Revenue and remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund.

**Source:** Laws 1990, LB 163, § 5; Laws 1993, LB 203, § 21; Laws 1999, LB 59, § 1.

**Cross References**

Nebraska Revenue Act of 1967, see section 77-2701.

**81-15,164 Collection of fees; manner.**

(1) Except as provided in subsection (2) of this section, the fees imposed by sections 81-15,159 to 81-15,165 shall be collected in the same manner as the sales tax under the Nebraska Revenue Act of 1967, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits under section 81-15,162, and no collection fees shall be allowed any retailer.

(2) The fees imposed by section 81-15,163 shall be collected in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

**Source:** Laws 1990, LB 163, § 6; Laws 1993, LB 203, § 22; Laws 1994, LB 1034, § 18; Laws 1999, LB 59, § 2.

**Cross References**

Nebraska Litter Reduction and Recycling Act, see section 81-1534.  
Nebraska Revenue Act of 1967, see section 77-2701.

**81-15,165 Tax Commissioner; collection fee; Waste Reduction and Recycling Incentive Fees Collection Fund; created; investment.**

The Tax Commissioner shall deduct and withhold from the fees collected pursuant to sections 81-15,159 to 81-15,165 a fee sufficient to reimburse himself or herself for the actual cost of collecting and administering such fees and shall credit such collection fee to the Waste Reduction and Recycling Incentive Fees Collection Fund which is hereby created. The Legislature shall appropriate money from the fund to the Department of Revenue to cover the actual costs of the department in administering the Waste Reduction and Recycling Incentive Act. Any money in the 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.

**Source:** Laws 1990, LB 163, § 7; Laws 1993, LB 203, § 23; Laws 1994, LB 1034, § 19; Laws 1994, LB 1066, § 123.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(m) SOLID WASTE MANAGEMENT PLAN

**81-15,166 Comprehensive plan; department; duties; legislative intent; Environmental Quality Council; duties.**

The Department of Environmental Quality, with the advice and consent of the Environmental Quality Council, shall contract for the preparation of a comprehensive solid waste management plan. Such plan shall be contracted for and prepared on or before December 15, 1991.

It is the intent of the Legislature that in preparation of the plan the state consider the following hierarchy of criteria: (1) Volume reduction at the source; (2) recycling, reuse, and vegetative waste composting; (3) incineration with energy resource recovery; (4) incineration for volume reduction; and (5) land disposal.

It is the intent of the Legislature that the plan be used as a guide to assist political subdivisions in the planning and implementation of their individual, joint, or regional solid waste management systems. The comprehensive solid waste management plan shall not supersede or impair plans, agreements, or contracts initiated by political subdivisions prior to December 15, 1991.

The Environmental Quality Council shall adopt and promulgate rules and regulations for solid waste management options which comply with Environmental Protection Agency rules and guidelines, including rules and guidelines promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments to Subtitle D of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.

**Source:** Laws 1990, LB 163, § 9; Laws 1991, LB 325, § 2; Laws 1993, LB 3, § 71.

(n) NEBRASKA ENVIRONMENTAL TRUST ACT

**81-15,167 Act, how cited.**

Sections 81-15,167 to 81-15,176 shall be known and may be cited as the Nebraska Environmental Trust Act.

**Source:** Laws 1992, LB 1257, § 44; Laws 2000, LB 957, § 7; Laws 2002, LB 1003, § 48.

**81-15,168 Legislative intent.**

It is the intent of the Legislature to establish the Nebraska Environmental Trust for the purpose of conserving, enhancing, and restoring 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 natural areas of aesthetic or scenic values. The current and future well-being of the state and its citizens is vitally dependent on a safe and clean environment and requires a dynamic, proactive approach to address environmental needs. The trust shall complement existing governmental and private efforts by encouraging and leveraging the use of private resources on environmental needs with the greatest potential impact on future environmental quality in Nebraska. The trust shall develop a long-range environmental focus which encompasses the vision of all Nebraskans regarding the future of

the environment and shall join public and private efforts in achieving the collective environmental goals of Nebraska's citizens.

**Source:** Laws 1992, LB 1257, § 45.

**81-15,169 Terms, defined.**

For purposes of the Nebraska Environmental Trust Act:

- (1) Board means the Nebraska Environmental Trust Board; and
- (2) Trust means the Nebraska Environmental Trust.

**Source:** Laws 1992, LB 1257, § 46; Laws 2000, LB 957, § 8.

**81-15,170 Nebraska Environmental Trust Board; created; membership; qualifications; executive director.**

The Nebraska Environmental Trust Board is hereby created as an entity of the executive branch. The board shall consist of the Director of Environmental Quality, the Director of Natural Resources, the Director of Agriculture, the secretary of the Game and Parks Commission, the chief executive officer of the Department of Health and Human Services or his or her designee, and nine citizens appointed by the Governor with the approval of a majority of the Legislature. The citizen members shall begin serving immediately following notice of nomination and prior to approval by the Legislature. The citizen members shall represent the general public and shall have demonstrated competence, experience, and interest in the environment of the state. Two of the citizen appointees shall also have experience with private financing of public-purpose projects. Three appointees shall be chosen from each of the three congressional districts. The board shall hire an executive director who shall hire and supervise other staff members as may be authorized by the board. The executive director shall serve at the pleasure of the board and be solely responsible to it. The Game and Parks Commission shall provide administrative support, including, but not limited to, payroll and accounting functions, to the board.

**Source:** Laws 1992, LB 1257, § 47; Laws 1993, LB 138, § 79; Laws 1996, LB 1044, § 869; Laws 2000, LB 900, § 248; Laws 2002, LB 1003, § 49; Laws 2007, LB296, § 758.

**81-15,170.01 Board members; conflict of interest; treatment.**

Members of the board shall comply with the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act. Any member of the board who is also a director of a state agency shall abstain from voting on applications which would provide funding primarily to his or her agency.

**Source:** Laws 2002, LB 1003, § 50.

**Cross References**

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

**81-15,171 Board members; terms; vacancy; expenses.**

The citizen members of the board shall be appointed for terms of six years, except that of the members first appointed, except directors of agencies, the terms of three shall expire at the end of the second year, three at the end of the fourth year, and three at the end of the sixth year, as designated at the time of

appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. A vacancy on the board shall exist in the event of the death, disability, or resignation of a member. All members shall be reimbursed for their actual and necessary travel expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1992, LB 1257, § 48; Laws 1993, LB 138, § 80.

**81-15,172 Board; officers; meetings.**

The board shall annually elect a chairperson from among the citizen members. The board shall meet at least quarterly and may meet more often at the call of the chairperson or the request of any three members.

**Source:** Laws 1992, LB 1257, § 49.

**81-15,173 Board; powers and duties.**

The board shall have and may exercise the following powers and duties:

- (1) Adopt bylaws to govern the proceedings of the board;
- (2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;
- (3) Contract with the Game and Parks Commission for administrative support;
- (4) Contract with governmental and private agencies to receive services and technical assistance;
- (5) Contract with governmental and private agencies to provide services and technical assistance;
- (6) Establish environmental categories for use of the funds and develop an appropriate rating system for each category;
- (7) Establish ad hoc advisory boards and subcommittees;
- (8) Sponsor or assist environmental proposals pertaining to the environmental categories of the board, including issuing grants to agencies, organizations, and persons engaged in the purposes of the trust;
- (9) Cooperate with or assist any unit of the state, any political subdivision, or any private, public, or federal agency, foundation, or person in furtherance of the purposes of the trust;
- (10) Acquire and dispose of personal property in furtherance of the purposes of the trust; and
- (11) Apply for or accept any gift, grant, bequest, royalty, or donation, designate the fund to which it will be credited, and expend the proceeds in furtherance of the purposes of the trust.

**Source:** Laws 1992, LB 1257, § 50; Laws 2000, LB 957, § 9; Laws 2004, LB 832, § 1.

**81-15,174 Nebraska Environmental Trust Fund; created; use; investment.**

The Nebraska Environmental Trust Fund is created. The fund shall be maintained in the state accounting system as a cash fund. Except as otherwise provided in this section, the fund shall be used to carry out the purposes of the

Nebraska Environmental Trust Act, including the payment of administrative costs. Money in the fund shall include proceeds credited pursuant to section 9-812 and proceeds designated by the board pursuant to section 81-15,173. Any money in the 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.

The State Treasurer shall transfer nine hundred twenty-five thousand dollars from the Nebraska Environmental Trust Fund to the Department of Natural Resources Water Issues Cash Fund, as administratively created pursuant to section 81-1111.04, on or after July 1, 2003, but no later than July 10, 2003.

The State Treasurer shall transfer one million dollars from the Nebraska Environmental Trust Fund to the Water Resources Trust Fund on July 1, 2004.

The State Treasurer shall transfer two million seven hundred sixty thousand seven hundred sixty dollars from the Nebraska Environmental Trust Fund to the University of Nebraska Central Administration Designated Cash Fund on March 1, 2007, unless LR 259CA is approved by the voters in the November 2006 general election, then the transfer shall occur on November 15, 2006.

**Source:** Laws 1992, LB 1257, § 51; Laws 1994, LB 1066, § 124; Laws 2000, LB 957, § 10; Laws 2002, Second Spec. Sess., LB 1, § 8; Laws 2003, LB 408, § 6; Laws 2004, LB 962, § 111; Laws 2006, LB 1061, § 12.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

#### **81-15,174.01 Nebraska Environmental Endowment Fund; created; use; investment.**

The Nebraska Environmental Endowment Fund is created. The fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act. The fund shall include proceeds designated by the board pursuant to section 81-15,173, including grants from the Nebraska Environmental Trust Fund. Grants from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund shall be no more than twice the total of any other proceeds received by the Nebraska Environmental Endowment Fund for the same year. Such grants, considered in the aggregate, shall in no case exceed fifty percent of the total proceeds credited to the Nebraska Environmental Trust Fund pursuant to section 9-812 for that year.

Any money in the 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.

Allocations received by the Nebraska Environmental Endowment Fund from the Nebraska Environmental Trust Fund shall not be reallocated by the board, but shall remain invested. Any interest income earned by the Nebraska Environmental Endowment Fund shall be available for allocation by the board as provided in section 81-15,175.

**Source:** Laws 2000, LB 957, § 11.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,175 Fund allocations; board; powers and duties.**

(1) The board may make an annual allocation each fiscal year from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund as provided in section 81-15,174.01. The board shall make annual allocations from the Nebraska Environmental Trust Fund and may make annual allocations each fiscal year from the Nebraska Environmental Endowment Fund for projects which conform to the environmental categories of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. The board shall establish a calendar annually for receiving and evaluating proposals and awarding grants. To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. Private citizens serving on advisory groups shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(2) The board shall establish rating systems for ranking proposals which meet the board's environmental categories and other criteria. The rating systems shall include, but not be limited to, the following considerations:

- (a) Conformance with categories established pursuant to section 81-15,176;
- (b) Amount of funds committed from other funding sources;
- (c) Encouragement of public-private partnerships;
- (d) Geographic mix of projects over time;
- (e) Cost-effectiveness and economic impact;
- (f) Direct environmental impact; and
- (g) Environmental benefit to the general public and the long-term nature of such public benefit.

(3) The board may establish a subcommittee to rate grant applications. If the board uses a subcommittee, the subcommittee shall (a) use the rating systems established by the board under subsection (2) of this section, (b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores, (c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and (d) submit the ranked list and recommended funding to the board for its approval or disapproval. A motion to deviate from the subcommittee's recommendations must specify the reason for doing so and be adopted with an affirmative vote of not fewer than eight members of the board.

(4) The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process except for the initial application and requests to renew the commitment.

(5) The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. The board shall conduct annual reviews of existing projects for compliance with project goals and grant requirements.

(6) Every five years the board may evaluate the long-term effects of the projects it funds. The evaluation may assess a sample of such projects. The

board may hire an independent consultant to conduct the evaluation and may report the evaluation findings to the Legislature and the Governor.

**Source:** Laws 1992, LB 1257, § 52; Laws 1993, LB 138, § 81; Laws 2000, LB 957, § 12; Laws 2002, LB 1003, § 51; Laws 2004, LB 832, § 2.

**81-15,176 Environmental categories of projects; board; establish grant criteria.**

(1) Subject to subsection (3) of this section, the board shall establish environmental categories of projects eligible for funding by the trust. The board, after allowing opportunity for public comment, shall designate as categories 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 categories, 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 categories for five-year periods beginning July 1, 1995. The board may establish annual priorities within the five-year categories. The board shall provide for public involvement in developing the categories for such five-year periods and any priorities within these categories, including, but not limited to, public meetings in each of the three congressional districts.

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

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

(b) No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The grants shall not pay for projects which provide primarily private benefits or relieve private liability for environmental damage;

(d) The grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship;

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

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

(g) The grants should assist those projects which will make a real contribution to achieving the board's environmental categories;

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

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

(3) Until the first five-year categories become effective on July 1, 1995, the board shall observe the following categories for allocating grants:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species;

(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 46-706, 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 categories.

**Source:** Laws 1992, LB 1257, § 53; Laws 1993, LB 138, § 82; Laws 1994, LB 1207, § 18; Laws 1996, LB 108, § 78; Laws 2000, LB 957, § 13; Laws 2002, LB 1003, § 52; Laws 2004, LB 832, § 3; Laws 2004, LB 962, § 113.

(o) SOLID WASTE LANDFILL CLOSURE ASSISTANCE FUND

**81-15,177 Solid Waste Landfill Closure Assistance Fund; established; use; investment; council; grants; duties.**

(1) There is hereby established the Solid Waste Landfill Closure Assistance Fund which shall be a cash fund administered by the Department of Environmental Quality. The fund shall be used:

(a) To provide grants for landfill site closing assessment, closure, monitoring, and remediation costs related to landfills existing or already closed on July 15, 1992; and

(b) To provide funds to the department for expenses incurred in carrying out its duties under sections 81-15,178 and 81-15,179.

Any money in the 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. Within five days after February 23, 2002, the State Treasurer shall transfer the balance of the fund to the Low-Level Radioactive Waste Cash Fund.

(2) The Environmental Quality Council shall adopt and promulgate rules and regulations regarding the form and procedure for applications for grants from the fund, procedures for determining claims for payment or reimbursement, procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund, procedures for determining priority among applicants, procedures for auditing persons who have received payments from the fund, and other provisions necessary to carry out sections 81-15,178 and 81-15,179.

**Source:** Laws 1992, LB 1257, § 54; Laws 1994, LB 1022, § 1; Laws 1994, LB 1066, § 125; Laws 1998, LB 924, § 45; Laws 2002, LB 1101, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,177.01 Solid Waste Landfill Closure Assistance Fund; applicant, defined.**

For purposes of sections 81-15,177 to 81-15,179, applicant shall mean any political subdivision which owns or operates or has previously owned or operated a landfill or any entity which owns or operates or has previously owned or operated a licensed landfill in the State of Nebraska.

**Source:** Laws 1994, LB 1022, § 2.

**81-15,178 Funding from Solid Waste Landfill Closure Assistance Fund; applicant; requirements.**

In order for an applicant to receive funding from the Solid Waste Landfill Closure Assistance Fund, the applicant shall:

- (1) Agree to use the funds for landfill site closing assessment, closure, monitoring, or remediation costs relating to landfills existing or already closed on July 15, 1992;
- (2) Provide the Department of Environmental Quality with documentation regarding the landfill closure site, including, when appropriate, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;
- (3) Provide a plan for the proposed project, including appropriate engineering, economic, and financial feasibility data and other data and information, including estimated costs, as may be required by the department; and
- (4) Demonstrate the anticipated environmental and ecological benefits resulting from the proposed project.

**Source:** Laws 1992, LB 1257, § 55; Laws 1994, LB 1022, § 3.

**81-15,179 Application for funds; department; powers and duties.**

Upon receipt of an application for funds from the Solid Waste Landfill Closure Assistance Fund, the Department of Environmental Quality shall evaluate and investigate all aspects of the proposed project and the proposed schedule for completion, determine eligibility and priority of the project for funding, and make appropriate grants from the fund pursuant to rules and regulations adopted and promulgated by the Environmental Quality Council. If the department determines that an application is unsatisfactory or does not contain adequate information, the department shall return the application to the applicant and may make recommendations to the applicant which the department considers necessary to make the plan or the application satisfactory.

**Source:** Laws 1992, LB 1257, § 56.

**(p) SUPERFUND COST SHARE CASH FUND****81-15,180 Superfund Cost Share Cash Fund; created; use; investment.**

The Superfund Cost Share Cash Fund is created. The Department of Environmental Quality shall remit grants and gifts received by the department for purposes of providing cost share for remediation of superfund sites to the State Treasurer for credit to the fund. The department shall administer the Superfund Cost Share Cash Fund to pay for nonfederal costs, including costs for in-kind

services, required as cost share for remediation of superfund sites. Any money in the 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.

The State Treasurer shall transfer the balance of the Department of Environmental Quality Superfund Cash Fund, administratively created pursuant to section 81-1111.04, to the Superfund Cost Share Cash Fund.

**Source:** Laws 2005, LB 426, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(q) REMEDIAL ACTION PLAN MONITORING ACT

**81-15,181 Act, how cited.**

Sections 81-15,181 to 81-15,188 shall be known and may be cited as the Remedial Action Plan Monitoring Act.

**Source:** Laws 1994, LB 1349, § 1; Laws 2004, LB 449, § 4.

**81-15,182 Terms, defined.**

For purposes of the Remedial Action Plan Monitoring Act:

(1) Land pollution means the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, solid waste, hazardous waste, petroleum, or hazardous substances, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state; and

(2) Water pollution means the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

**Source:** Laws 1994, LB 1349, § 2; Laws 2004, LB 449, § 5.

**81-15,183 Remedial Action Plan Monitoring Fund; created; use; investment.**

(1) The Remedial Action Plan Monitoring Fund is created. The fund shall be administered by the Department of Environmental Quality. Revenue from the following sources shall be credited to the fund:

- (a) Application fees collected under the Remedial Action Plan Monitoring Act;
- (b) Deposits for costs associated with administration of the act, including review, oversight, and guidance;
- (c) Gifts, grants, reimbursements, or appropriations from any source intended to be used for purposes of the act; and
- (d) Investment interest attributable to the fund.

(2) The fund shall be used by the department to:

- (a) Review applications and provide technical review, oversight, guidance, and other activities associated with remedial action plans for land pollution or water pollution;

(b) Fund activities performed by the department to address immediate or emergency threats to human health and the environment related to property under the act; and

(c) Administer and enforce the act.

(3) Any money in the 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.

**Source:** Laws 1994, LB 1349, § 3; Laws 1995, LB 7, § 130; Laws 2004, LB 449, § 6.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,184 Remedial action plan; application for monitoring; requirements; fees; department; duties.**

(1) Any entity which voluntarily chooses to make application for monitoring of remedial action plans for property where land pollution or water pollution exists shall:

(a) Submit an application on a form approved by the Department of Environmental Quality;

(b) Provide the department with a nonrefundable application fee of two thousand dollars; and

(c) Execute a written agreement to provide reimbursement of all department direct and indirect costs related to technical review, oversight, guidance, and other activities associated with the remedial action plan. As part of the voluntary agreement, the department shall require the applicant to post a deposit of three thousand dollars to be used by the department to cover all costs. The department shall not commence technical review, oversight, guidance, or other activities associated with the remedial action plan until the voluntary agreement is executed and a complete remedial action plan has been submitted. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department and the applicant may be required prior to proceeding. After the mutual termination of the voluntary agreement, any balance of funds paid under this subdivision shall be refunded.

(2) The department shall review and approve or deny all applications and notify the applicant in writing. If the application is denied, the notification shall state the reason for the denial. If the department determines that an application does not contain adequate information, the department shall return the application to the applicant. The applicant has sixty days to resubmit the required information or the application will be deemed denied.

(3) Within ninety days of approval of the application and voluntary agreement, the applicant shall provide a complete remedial action plan for the proposed project that conforms to all federal and state environmental standards and substantive requirements, including:

(a) Documentation regarding the investigation of land pollution or water pollution including, when appropriate, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

(b) A remedial action work plan which describes the remedial action measures to be taken to address the land or water pollution; and

(c) Project monitoring reports, appropriate engineering, scientific, and financial feasibility data, and other data and information as may be required by the department.

**Source:** Laws 1994, LB 1349, § 4; Laws 2004, LB 449, § 8; Laws 2008, LB724, § 1.

Effective date July 18, 2008.

**81-15,185 Department of Environmental Quality; remedial action plan; approval or disapproval; notification.**

Upon receipt of a voluntary remedial action plan for land pollution or water pollution pursuant to section 81-15,184, the Department of Environmental Quality shall review and approve or disapprove the plan and notify the applicant in writing. If the plan is disapproved, the notification shall state the reason for the disapproval and provide a reasonable opportunity to resubmit the plan.

**Source:** Laws 1994, LB 1349, § 5; Laws 2004, LB 449, § 9.

**81-15,185.01 Remedial action plan; notice; hearing.**

The Department of Environmental Quality shall issue public notice of its intent to approve a voluntary remedial action plan pursuant to section 81-15,185 in a local newspaper of general circulation in the area affected and make the remedial action plan available to the public. The public shall have thirty days from the date of publication during which any person may submit written comments to the department regarding the proposed remedial action. Such person may also request or petition the Director of Environmental Quality, in writing, for a hearing and state the nature of the issues to be raised. The director shall hold a public hearing if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interest exists.

**Source:** Laws 2004, LB 449, § 10.

**81-15,185.02 Remedial action plan; termination; notification.**

(1) The applicant may unilaterally terminate a voluntary remedial action plan approved pursuant to section 81-15,185 prior to completion of investigative and remedial activities if the applicant leaves the property in no worse condition, from a human health and environment perspective, than when the applicant initiated voluntary remedial action and the applicant reimburses the Department of Environmental Quality for all outstanding costs.

(2) The department may terminate a voluntary remedial action plan if the applicant:

(a) Violates any terms or conditions of the plan or fails to fulfill any obligations of the plan, including submission of an acceptable remedial action plan within a reasonable period of time;

(b) Fails to address an immediate and significant risk of harm to public health and the environment in a timely and effective manner; or

(c) Fails to initiate the plan within six months after approval by the department or to complete the plan within twenty-four months after approval by the

department, excluding long-term operation, maintenance, and monitoring, unless the department grants an extension of time.

(3) The department shall notify the applicant in writing of the intention to terminate the voluntary remedial action plan and include the reason for the termination and a summary of any unreimbursed costs of the department that are due.

**Source:** Laws 2004, LB 449, § 11.

**81-15,185.03 Remedial action plan; completion; duties; enforceability.**

(1) Within sixty days after completion of a voluntary remedial action plan approved pursuant to section 81-15,185, the applicant shall provide the Department of Environmental Quality with a final remedial action report and assurance that the plan has been fully implemented. Department approval of a voluntary remedial action plan shall be void upon failure to comply with the approved plan or willful submission of false, inaccurate, or misleading information by the applicant.

(2) Voluntary remedial action plans approved under section 81-15,185 are not enforceable unless the department can demonstrate that the applicant has failed to fully implement the approved plan. The department may require further action if such action is authorized by other state statutes administered by the department.

**Source:** Laws 2004, LB 449, § 12.

**81-15,186 Department of Environmental Quality; issuance of letter; contents.**

If the requirements of the Remedial Action Plan Monitoring Act are met and the applicant has remitted all applicable fees, the Department of Environmental Quality may issue to the applicant a letter stating that no further action need be taken at the site related to any contamination for which remedial action has been taken in accordance with the approved remedial action plan. Such letter shall provide that the department may require the person to conduct additional remedial action in the event that any monitoring conducted at or near the real property or other circumstances indicate that (1) contamination is reoccurring, (2) additional contamination is present which was not identified pursuant to section 81-15,184, or (3) additional contamination is present for which remedial action was not taken according to the remedial action plan. As a condition of issuance, the department may require payment of ongoing direct and indirect costs of oversight of any ongoing long-term operation, maintenance, and monitoring.

**Source:** Laws 1994, LB 1349, § 6; Laws 2004, LB 449, § 13.

**81-15,186.01 Rules and regulations.**

The Environmental Quality Council may adopt and promulgate rules and regulations necessary to administer and enforce the provisions of the Remedial Action Plan Monitoring Act.

**Source:** Laws 2004, LB 449, § 7.

**81-15,187 Act, how construed; indemnification.**

The Remedial Action Plan Monitoring Act shall not be construed as an acceptance of liability by the State of Nebraska for activities conducted pursuant to such act. Entities proceeding under such act shall indemnify and hold harmless the State of Nebraska for any further action required by the federal Environmental Protection Agency relating to land pollution or water pollution by an entity.

**Source:** Laws 1994, LB 1349, § 7.

**81-15,188 Act; supplemental to other laws; how construed.**

The powers conferred by the Remedial Action Plan Monitoring Act shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby, and the act shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

**Source:** Laws 1994, LB 1349, § 8.

(r) TECHNICAL ADVISORY COMMITTEE

**81-15,189 Technical advisory committee; members; qualifications; expenses.**

In order to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act, the Director of Environmental Quality shall appoint a technical advisory committee to work with the Department of Environmental Quality. The duties of the committee are advisory only. Committee members shall include, but not be limited to:

- (1) The Director of Environmental Quality or his or her designee;
- (2) The State Fire Marshal or his or her designee;
- (3) The executive director of the Nebraska Petroleum Marketers and Convenience Store Association or his or her designee;
- (4) The executive director of the League of Nebraska Municipalities or his or her designee;
- (5) The executive director of the Nebraska Association of County Officials or his or her designee;
- (6) The executive director of the Nebraska Petroleum Council or his or her designee;
- (7) The executive director of the American Consulting Engineers Council of Nebraska or his or her designee;
- (8) The executive director of the Nebraska Chamber of Commerce and Industry or his or her designee;
- (9) The executive director of the Associated Builders and Contractors or his or her designee;
- (10) The executive director of the Nebraska Cooperative Council or his or her designee;
- (11) A representative of the Department of Health and Human Services; and
- (12) A member of the public representing environmental interests.

Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1996, LB 1226, § 19; Laws 1998, LB 1161, § 47; Laws 2007, LB296, § 759.

**Cross References**

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

**Petroleum Release Remedial Action Act**, see section 66-1501.

**81-15,190 Technical advisory committee; duties; termination.**

(1) The technical advisory committee created in section 81-15,189 shall meet at least once each quarter of the calendar year, as determined by the Department of Environmental Quality.

(2) The technical advisory committee shall:

(a) Annually review and make recommendations to the department on the current schedule of reasonable rates made available to the public by the department under section 66-1518;

(b) Review summaries of reimbursement determinations;

(c) Review and make recommendations to the department on the guidelines for pay-for-performance programs or any other innovative contracting methods;

(d) Review and make recommendations to the department on the department's audit programs in conjunction with the Petroleum Release Remedial Action Act;

(e) Review and make recommendations to the department on any other activities under the Petroleum Release Remedial Action Act and the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(f) Take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action as applied at petroleum release sites.

(3) The technical advisory committee shall cease to exist on March 1, 2002.

**Source:** Laws 1996, LB 1226, § 20; Laws 1998, LB 1161, § 48.

**Cross References**

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

**Petroleum Release Remedial Action Act**, see section 66-1501.

(s) **NEBRASKA EMERGENCY PLANNING AND  
COMMUNITY RIGHT TO KNOW ACT**

**81-15,191 Act, how cited.**

Sections 81-15,191 to 81-15,235 shall be known and may be cited as the Nebraska Emergency Planning and Community Right to Know Act.

**Source:** Laws 1997, LB 374, § 1.

**81-15,192 Legislative intent.**

(1) It is the intent of the Legislature to adopt the Nebraska Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

(2) The Legislature finds that the release of hazardous and toxic chemicals threatens the health and safety of the public and the environment. The Legislature further finds that increased public knowledge and access to information on the presence of hazardous and toxic chemicals in communities enables the public to work with facilities, communities, state and federal agencies, and governmental bodies to improve chemical safety and protect the health and safety of the public and the environment. The Legislature further finds that the community's right to know is essential in protecting the health and safety of the public and the environment. The Legislature further finds that emergency planning and notification requirements assist the state and local communities in planning for and responding to a release of extremely hazardous substances.

(3) It is the intent of the Legislature that all state agencies involved in emergency release notification, reporting, planning, training, response, and preparedness will coordinate and collaborate in carrying out the purposes of the Nebraska Emergency Planning and Community Right to Know Act and may, to the extent possible, share resources and funding.

(4) It is the intent of the Legislature that the reporting requirements of the Nebraska Emergency Planning and Community Right to Know Act are to be no more stringent than the reporting requirements of the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

**Source:** Laws 1997, LB 374, § 2.

**81-15,193 Definitions, where found.**

For purposes of the Nebraska Emergency Planning and Community Right to Know Act, the definitions found in sections 81-15,194 to 81-15,209 apply.

**Source:** Laws 1997, LB 374, § 3.

**81-15,194 Administrator, defined.**

Administrator means the Administrator of the United States Environmental Protection Agency.

**Source:** Laws 1997, LB 374, § 4.

**81-15,195 Commission, defined.**

Commission means the State Emergency Response Commission.

**Source:** Laws 1997, LB 374, § 5.

**81-15,196 Director, defined.**

Director means the Director of Environmental Quality.

**Source:** Laws 1997, LB 374, § 6.

**81-15,197 Environment, defined.**

Environment includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

**Source:** Laws 1997, LB 374, § 7.

**81-15,198 Extremely hazardous substance, defined.**

Extremely hazardous substance means a substance which meets the threshold requirements identified on the List of Extremely Hazardous Substances under 40 C.F.R. part 355, Appendices A and B.

**Source:** Laws 1997, LB 374, § 8.

**81-15,199 Facility, defined.**

Facility means the buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person which controls, is controlled by, or is under common control with such person.

**Source:** Laws 1997, LB 374, § 9.

**81-15,200 Governing body, defined.**

Governing body means the governing body of a village, city, or county.

**Source:** Laws 1997, LB 374, § 10.

**81-15,201 Hazardous chemical, defined.**

Hazardous chemical has the same meaning as in 29 C.F.R. 1910.1200(c).

**Source:** Laws 1997, LB 374, § 11.

**81-15,202 Hazardous substance, defined.**

Hazardous substance has the same meaning as in 40 C.F.R. part 302, Table 302.4.

**Source:** Laws 1997, LB 374, § 12.

**81-15,203 Inventory form, defined.**

Inventory form means an emergency and hazardous chemical inventory form required to be prepared by an owner or operator of any facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.

**Source:** Laws 1997, LB 374, § 13.

**81-15,204 List of chemicals, defined.**

List of chemicals includes each of the following:

(1) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act, grouped in categories of health and physical hazards as set forth under the act and regulations promulgated under the act or in such other categories as prescribed under section 311 of Title III;

(2) The chemical name or the common name of each such chemical as provided on the material safety data sheet; and

(3) Any hazardous component of each such chemical as provided on the material safety data sheet.

**Source:** Laws 1997, LB 374, § 14.

**81-15,205 Material safety data sheet, defined.**

Material safety data sheet means the sheet required to be developed under 29 C.F.R. 1910.1200(g).

**Source:** Laws 1997, LB 374, § 15.

**81-15,206 Release, defined.**

Release means to spill, leak, pump, pour, emit, empty, discharge, inject, escape, leach, dump, or dispose any hazardous chemical, extremely hazardous substance, or toxic chemical into the environment and includes the abandonment or discarding of barrels, containers, and other closed receptacles containing any such chemical or substance.

**Source:** Laws 1997, LB 374, § 16.

**81-15,207 State Administrator, defined.**

State Administrator means the director of the Nebraska Emergency Management Agency.

**Source:** Laws 1997, LB 374, § 17.

**81-15,208 Title III, defined.**

Title III means the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

**Source:** Laws 1997, LB 374, § 18.

**81-15,209 Toxic chemical, defined.**

Toxic chemical means a substance on the list in Committee Print Number 99-169, as amended, of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986", including any revised version as may be made pursuant to section 313 of Title III.

**Source:** Laws 1997, LB 374, § 19.

**81-15,210 State Administrator; State Emergency Response Commission; created; members; terms.**

(1) The director of the Nebraska Emergency Management Agency shall serve as the State Administrator of the Nebraska Emergency Planning and Community Right to Know Act. The State Emergency Response Commission is created and shall be a part of the Nebraska Emergency Management Agency for administrative purposes. The membership of the commission shall include the Director of Environmental Quality or his or her designee, the Director-State Engineer or his or her designee, the Superintendent of Law Enforcement and Public Safety or his or her designee, the State Fire Marshal or his or her designee, the director of the Nebraska Emergency Management Agency or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, two elected officials or employees of municipal or county government, and one citizen member to represent each of the following interest groups: Firefighters, local emergency management, public or community health, environmental protection, labor, school district, small

business, agricultural business, chemical industry, highway transportation, and rail transportation. The Governor shall appoint the municipal or county government officials or employees and the citizen members with the approval of the Legislature. The appointments shall be made to represent the three congressional districts as equally as possible.

(2) The members appointed by the Governor shall be appointed for terms of four years, except that of the first citizen members appointed, three members shall serve for one-year terms, three members shall serve for two-year terms, and two members shall serve for three-year terms, as designated at the time of appointment.

(3) A vacancy on the commission shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed by the Governor for the remainder of such term.

**Source:** Laws 1997, LB 374, § 20; Laws 2007, LB296, § 760.

**81-15,211 Chairperson; meetings; expenses.**

(1) The commission shall annually elect a chairperson from among its citizen members. The commission shall meet at least twice each year and may meet more often at the call of the chairperson or at the request of any three members.

(2) All members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1997, LB 374, § 21.

**81-15,212 Commission; duties; emergency planning districts.**

(1) The commission shall:

(a) Appoint local emergency planning committees pursuant to section 81-15,215; and

(b) Supervise and coordinate the activities of the local emergency planning committees.

(2) The commission shall designate each county or, where appropriate, multiple counties as emergency planning districts in order to facilitate preparation and implementation of emergency plans.

**Source:** Laws 1997, LB 374, § 22.

**81-15,213 Nebraska Emergency Management Agency; Department of Environmental Quality; duties.**

(1) The Nebraska Emergency Management Agency shall supervise and coordinate emergency planning and training under section 305 of Title III and shall oversee and distribute all funds received under section 305 of Title III and section 81-15,214.

(2) The Department of Environmental Quality shall receive emergency notification and facility reports and establish procedures for receiving and processing requests from the public for information as required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The

director or his or her designee shall serve as commission coordinator for information.

**Source:** Laws 1997, LB 374, § 23.

**81-15,214 Nebraska Emergency Planning and Community Right to Know Cash Fund; created; use; investment.**

(1) There is hereby created the Nebraska Emergency Planning and Community Right to Know Cash Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Nebraska Emergency Planning and Community Right to Know Act, including:

(a) The funding of specific projects as approved by the commission; and

(b) The payment of expenses incurred by the commission to administer the fund. Payment from the fund for costs of administering the fund shall not exceed fifteen percent of the total receipts of the fund during the fiscal year. The commission shall adopt and promulgate rules and regulations governing allocations from the fund and shall publish guidelines regarding allocations from the fund. Any money in the 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.

(2) Entities receiving allocations from the Nebraska Emergency Planning and Community Right to Know Cash Fund shall expend the allocation in a manner expressly approved by the commission. If allocations from the fund are used for purposes other than those approved by the commission, the commission may recover by appropriate legal means any funds spent inconsistent with the terms of the allocation. Any recovered funds shall be deposited in the fund.

**Source:** Laws 1997, LB 374, § 24.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-15,215 Local emergency planning committee; members; terms.**

The commission shall appoint the members of each local emergency planning committee for each emergency planning district established after September 13, 1997. Only one local emergency planning committee shall be established in each district. To the extent possible, each committee established prior to, on, or after September 13, 1997, shall include at a minimum a representative from each of the following interest groups: State and local elected officials, public health, local environmental protection, hospitals, firefighters, local emergency management, law enforcement, transportation, broadcast and print media, neighborhood and community organizations, and owners and operators of facilities which are subject to the requirements of the Nebraska Emergency Planning and Community Right to Know Act. The committee members shall be appointed for terms of two years, except that of the initial appointees, approximately one-half of the members shall serve for terms of one year as designated at the time of appointment. A vacancy on a committee shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill

a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

**Source:** Laws 1997, LB 374, § 25.

**81-15,216 Local emergency planning committee; chairperson; meetings.**

Each local emergency planning committee shall annually elect a chairperson. Each committee shall meet at least annually and may meet more often at the call of the chairperson or at the request of any three members.

**Source:** Laws 1997, LB 374, § 26.

**81-15,217 Local emergency planning committee; powers and duties.**

(1) Each local emergency planning committee shall:

(a) Establish rules governing the functioning of the committee consistent with the Open Meetings Act and sections 84-712 to 84-712.09. The rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan required under subdivision (c) of this subsection, public comments, response to such comments by the committee, and distribution of the emergency plan;

(b) Establish procedures for receiving and processing requests from the public for information required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The procedures shall include provisions to inform members of the public of the right to bring an action under federal law to enforce the act. The procedures shall include the designation of an official to serve as coordinator for information;

(c) Complete preparation of an emergency plan in accordance with the act not later than January 1, 1998, unless a plan for the emergency planning district has previously been submitted and approved by the commission. The committee shall review and update the plan once a year beginning March 1, 1999, and each March 1 thereafter, or more frequently as changed circumstances in the community or at any facility may require;

(d) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan and make recommendations with respect to additional resources that may be required and the means for providing such additional resources; and

(e) Designate a public library in each county within its district as a depository for the emergency plan, deliver the plan to the designated library, and update the plan as necessary.

(2) Each local emergency planning committee may receive gifts, bequests, grants, or other contributions or donations from public or private sources to carry out its duties and the purposes of the act, including, but not limited to, administrative costs and reimbursement to committee members for their actual and necessary travel expenses. Any gifts, bequests, grants, or other contributions or donations received from public or private sources shall be accounted for in an annual report to the commission. The commission shall adopt and promulgate rules and regulations governing the receipt and use of any gifts, bequests, grants, or other contributions or donations from public or private sources.

**Source:** Laws 1997, LB 374, § 27; Laws 2004, LB 821, § 32.

Open Meetings Act, see section 84-1407.

**81-15,218 Facility; notifications required.**

(1) The owner or operator of each facility in which an extremely hazardous substance exceeding threshold planning quantities is present shall notify the commission that such facility is subject to the Nebraska Emergency Planning and Community Right to Know Act within sixty days after September 13, 1997, unless notification was made prior to September 13, 1997, and shall notify the commission and the local emergency planning committee of the emergency planning district in which the facility is located that such facility is subject to the act within sixty days after an extremely hazardous substance first becomes present at such facility in excess of the threshold planning quantity established for such substance. If there is a revision of the definition of extremely hazardous substances and the facility has present a substance included in the revised definition in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the commission and the committee of the district in which the facility is located within sixty days after such revision that such facility is subject to the act.

(2) The commission shall notify the director and the State Administrator of facilities subject to the act. The notification shall include:

(a) Each notification received from a facility under subsection (1) of this section; and

(b) Each facility designated by the commission under subsection (3) of this section.

(3) For purposes of emergency planning, the commission may designate additional facilities which are subject to the act if such designation is made after public notice and opportunity for comment. The commission shall notify the facility concerned of any designation under this subsection.

**Source:** Laws 1997, LB 374, § 28.

**81-15,219 Facility emergency coordinator.**

Within thirty days after the establishment of a committee for the emergency planning district in which a reporting facility is located, the owner or operator of the facility shall provide to the committee the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator. The owner or operator of the facility shall promptly inform the committee of any relevant changes occurring at the facility as changes occur or are expected to occur. Upon request from the committee, the owner or operator of the facility shall promptly provide information to the committee which is necessary for developing and implementing the emergency plan.

**Source:** Laws 1997, LB 374, § 29.

**81-15,220 Emergency plan; contents.**

Each emergency plan as required in subdivision (1)(c) of section 81-15,217 shall include, but not be limited to, the following:

(1) Identification of facilities containing an extremely hazardous substance in an amount which exceeds the threshold planning quantity established for such

substance that are within the emergency planning district, identification of routes likely to be used for the transportation of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this section;

(2) Methods and procedures to be followed by facility owners and operators and local emergency response and medical personnel to respond to any release of extremely hazardous substances;

(3) Designation of a community emergency coordinator and identification of facility emergency coordinators who will make determinations necessary to implement the plan;

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan and to the public that a release has occurred. Notification procedures shall be consistent with the notification requirements of section 81-15,222;

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by the release;

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the Nebraska Emergency Planning and Community Right to Know Act and an identification of the persons responsible for the equipment and facilities;

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) Training programs, including schedules for training of local emergency response and medical personnel; and

(9) Methods and schedules for exercising the emergency plan.

**Source:** Laws 1997, LB 374, § 30.

#### **81-15,221 Emergency plan review.**

Each local emergency planning committee shall provide the emergency plan to the governing bodies having jurisdiction in the emergency planning district for review prior to submitting the plan to the commission. The commission shall review the plan and make recommendations to the committee on revisions to the plan that may be necessary to ensure coordination of the plan with emergency plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of the plan.

**Source:** Laws 1997, LB 374, § 31.

#### **81-15,222 Release notification.**

(1) An owner or operator of a facility shall immediately provide notice as described in subsection (2) of this section if:

(a) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.;

(b) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release is not subject to the notification requirements under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but only if the release:

(i) Is not a federally permitted release as defined in section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;

(ii) Is in an amount in excess of a quantity which the administrator has determined by regulation requires notice; and

(iii) Occurs in a manner which would require notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; or

(c) A release of a substance which is not an extremely hazardous substance occurs at a facility at which a hazardous chemical is produced, used, or stored and such release requires notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(2) Notice shall be given immediately after the release by the owner or operator of the facility by such means as telephone or radio or in person to the commission coordinator for information and to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section or storage incident to such transportation, the notice shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(3) Notice required under this section shall include each of the following to the extent known at the time of the notice and so long as no delay in responding to the emergency results:

(a) The chemical name or identity of any substance involved in the release;

(b) An indication of whether the substance is an extremely hazardous substance;

(c) An estimate of the quantity of any such substance that was released into the environment;

(d) The time and duration of the release;

(e) The medium or media into which the release occurred;

(f) Any known or anticipated acute or chronic health risks associated with the emergency and, if appropriate, advice regarding medical attention necessary for exposed individuals;

(g) Proper precautions to take as a result of the release, including evacuation, unless such information is readily available to the community emergency coordinator pursuant to the emergency plan; and

(h) The name and telephone number of the person or persons to be contacted for further information.

(4) As soon as practicable after a release which requires notice and as more information becomes available, such owner or operator shall provide a written followup emergency notice or notices setting forth and updating the information required under subsection (3) of this section and including additional information with respect to:

- (a) Actions taken to respond to and contain the release;
  - (b) Any known or anticipated acute or chronic health risks associated with the release; and
  - (c) If appropriate, advice regarding medical attention necessary for exposed individuals.
- (5) This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located. The exemption provided in section 81-15,227 relating to transportation does not apply to this section.
- (6) For purposes of this section, facility also includes motor vehicles, rolling stock, and aircraft.

**Source:** Laws 1997, LB 374, § 32.

**81-15,223 Material safety data sheet.**

- (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act shall submit a material safety data sheet for each such chemical meeting threshold quantity requirements under regulations promulgated under Title III or shall submit a list of chemicals to:
- (a) The local emergency planning committee for the emergency planning district in which the facility is located;
  - (b) The commission coordinator for information; and
  - (c) The fire department with jurisdiction over the facility.
- (2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:
- (a) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary; or
  - (b) Submitting a material safety data sheet for the mixture itself or identifying the mixture on a list of chemicals.
- (3) Each owner or operator of a facility submitting a list of chemicals under subsection (1) of this section shall, upon request by the committee, submit the material safety data sheet for any chemical on the list to the committee.
- (4) A committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 81-15,229. If the committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 81-15,229.
- (5) Unless provided prior to September 13, 1997, the initial material safety data sheet or list of chemicals required under this section with respect to a hazardous chemical shall be provided before the later of:
- (a) January 1, 1998; or
  - (b) Three months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under

the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act.

(6) Within three months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the committee under subsection (1) of this section, a revised sheet shall be provided to the committee.

(7) For purposes of this section, hazardous chemical does not include:

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the federal Food and Drug Administration;

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(c) Any substance to the extent it is used for personal, family, or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(d) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; or

(e) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

**Source:** Laws 1997, LB 374, § 33.

**81-15,224 Tier II inventory form.**

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical meeting threshold quantity requirements under regulations promulgated under Title III shall prepare and submit annually on or before March 1 beginning in 1998 a tier II inventory form on data for the preceding calendar year to:

(a) The local emergency planning committee for the emergency planning district in which the facility is located;

(b) The commission coordinator for information; and

(c) The fire department with jurisdiction over the facility.

(2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(a) Providing information on the tier II inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the tier II inventory form for the element or compound at the facility is necessary; or

(b) Providing information on the tier II inventory form on the mixture itself.

(3) A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a list of chemicals is required under section 81-15,223.

(4) A tier II inventory form shall provide the following information for each hazardous chemical present at the facility:

(a) The chemical name or the common name of the chemical as provided on the material safety data sheet;

(b) An estimate in ranges of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year;

(c) An estimate in ranges of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year;

(d) A brief description of the manner of storage of the hazardous chemical;

(e) The location at the facility of the hazardous chemical; and

(f) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 81-15,229.

(5) Upon request by the commission, the director, a committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (4) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(6) A state or local official acting in his or her official capacity may have access to tier II information by submitting a request to the commission or a committee. Upon receipt of a request for tier II information, the commission or committee shall request such information from the facility owner or operator and make such information available to the official.

(7) Any person may make request to the commission, the director, or a committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(8) Any tier II information which the commission, the director, or a committee has in its possession shall be made available to a person making a request under this section in accordance with section 81-15,229. If the commission, director, or committee does not have the tier II information in its possession, upon a request for the information the commission, director, or committee shall request the facility owner or operator for the information with respect to a hazardous chemical which a facility has stored in an amount in excess of ten thousand pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 81-15,229 to the person making the request.

(9) In the case of tier II information which is not in the possession of the commission, the director, or a committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than ten thousand pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The commission, director, or committee may request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the commission, director, or committee shall make the information available to the person in accordance with section 81-15,229.

(10) The commission, the director, or a committee shall respond to a request for tier II information under this section no later than forty-five days after the date of receipt of the request.

(11) An owner or operator of a facility which files an inventory form under this section shall, upon request by the fire department with jurisdiction over the facility, allow the fire department to conduct an onsite inspection of the facility

and shall provide to the fire department specific location information on hazardous chemicals at the facility.

**Source:** Laws 1997, LB 374, § 34.

**81-15,225 Toxic chemical release form.**

(1) The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under section 313(g) of Title III for each toxic chemical that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (2) of this section during the preceding calendar year at such facility. The form shall be submitted to the director annually on July 1 and shall contain data reflecting releases during the preceding calendar year.

(2) The requirements of this section apply to owners and operators of facilities that are required to file reports under section 313 of Title III and rules and regulations promulgated thereunder.

**Source:** Laws 1997, LB 374, § 35.

**81-15,226 Owner or operator; information to health professionals; confidentiality.**

(1) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and the requirements of Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (5) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that:

(a) The information is needed for purposes of diagnosis or treatment of an individual;

(b) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned; and

(c) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(2) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and Title III shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines:

(a) A medical emergency exists;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(c) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III regarding trade secrets from a material safety data sheet, an inventory form, or a toxic chemical release form shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (5) of this section and a statement setting forth the items listed in subdivisions (2)(a) through (2)(c) of this section as soon as circumstances permit.

(3) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional:

(a) Who is a local or state government employee or a person under contract with the local or state government; and

(b) Who requests such information in writing and provides a written statement of need under subsection (4) of this section and a written confidentiality agreement under subsection (5) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local or state health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(4) The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(a) To assess exposure of persons living in a local community to the hazards of the chemical concerned;

(b) To conduct or assess sampling to determine exposure levels of various population groups;

(c) To conduct periodic medical surveillance of exposed population groups;

(d) To provide medical treatment to exposed individuals or population groups;

(e) To conduct studies to determine the health effects of exposure; and

(f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(5) Any person obtaining information under subsection (1) or (3) of this section shall be required to agree in a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted in the statement of need except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing

in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

**Source:** Laws 1997, LB 374, § 36.

**81-15,227 Exemption for transportation.**

Except as provided in section 81-15,222, the Nebraska Emergency Planning and Community Right to Know Act does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of the act, including the transportation and distribution of natural gas.

**Source:** Laws 1997, LB 374, § 37.

**81-15,228 Local law; applicability.**

(1) Nothing in the Nebraska Emergency Planning and Community Right to Know Act shall:

- (a) Preempt any local law;
- (b) Except as provided in subsection (2) of this section, otherwise affect any local law or the authority of any local government to adopt or enforce any local law; and
- (c) Affect or modify in any way the obligations or liabilities of any person under other state or federal law.

(2) Any local law enacted after September 13, 1997, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under section 81-15,223. In addition, a locality may require the submission of information which is supplemental to the information required on the data sheet, including information on the location and quantity of hazardous chemicals present at the facility, through additional sheets attached to the data sheet or such other means as the locality considers appropriate.

**Source:** Laws 1997, LB 374, § 38.

**81-15,229 Inspection of information; publication of notice.**

(1) Each emergency plan, material safety data sheet, list of chemicals, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322 of Title III, during normal working hours at the location or locations designated by the Department of Environmental Quality, the commission, or a local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 81-15,224, the Department of Environmental Quality, the commission, or the appropriate committee shall withhold from disclosure under this section the location of any specific chemical required by section 81-15,225 to be contained in an inventory form as tier II information.

(2) Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet,

form, or followup notice may do so at the location designated under subsection (1) of this section.

**Source:** Laws 1997, LB 374, § 39.

**81-15,230 Violations; civil actions.**

(1) Any state or local government may commence a civil action against an owner or operator of a facility for failure to:

(a) Provide notification to the commission under subsection (1) of section 81-15,218;

(b) Submit a material safety data sheet or a list of chemicals under section 81-15,223;

(c) Make available information requested under subsections (3) and (4) of section 81-15,223; and

(d) Complete and submit a tier II inventory form under section 81-15,224.

(2) The commission, the director, or a local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 81-15,219 or for failure to submit tier II information under subsection (5) of section 81-15,224.

(3) The state may commence a civil action against the administrator for failure to provide information to the state under section 322(g) of Title III.

**Source:** Laws 1997, LB 374, § 40.

**81-15,231 Civil action; jurisdiction.**

(1) Any action under section 81-15,230, except as provided in subsection (2) of this section, against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (3) of section 81-15,230 against the administrator may be brought in the United States District Court for the District of Columbia.

(3) Except as provided in subsection (2) of this section, the district court shall have jurisdiction in actions brought under section 81-15,230 against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under section 81-15,230 against the commission and the director to order the commission and the director to perform the act or duty concerned.

**Source:** Laws 1997, LB 374, § 41.

**81-15,232 Civil action; restriction.**

No action may be commenced under section 81-15,230 against an owner or operator of a facility if the administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under Title III with respect to the violation of the requirement.

**Source:** Laws 1997, LB 374, § 42.

**81-15,233 Court award costs of litigation; attorney's fees.**

(1) In issuing any final order in any action brought under the Nebraska Emergency Planning and Community Right to Know Act, the court may award costs of litigation, including reasonable attorney's fees and expert witness fees, to the prevailing or the substantially prevailing party if the court determines such an award is appropriate.

(2) Nothing in section 81-15,230 shall restrict or expand any right which any person or class of persons may have under any federal or state statute or common law to seek enforcement of any requirement of the act.

**Source:** Laws 1997, LB 374, § 43.

**81-15,234 Intervention.**

(1) In any action under the Nebraska Emergency Planning and Community Right to Know Act, the State of Nebraska, if not a party, may intervene as a matter of right.

(2) In any action under the act, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

**Source:** Laws 1997, LB 374, § 44.

**81-15,235 Rules and regulations.**

The Nebraska Emergency Management Agency shall as necessary adopt and promulgate rules and regulations to carry out its responsibilities under the Nebraska Emergency Planning and Community Right to Know Act. The Environmental Quality Council shall adopt and promulgate rules and regulations necessary for the Department of Environmental Quality to carry out its responsibilities under the act.

**Source:** Laws 1997, LB 374, § 45.

(t) PRIVATE ONSITE WASTEWATER TREATMENT  
SYSTEM CONTRACTORS CERTIFICATION  
AND SYSTEM REGISTRATION ACT

**81-15,236 Act, how cited.**

Sections 81-15,236 to 81-15,253 shall be known and may be cited as the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act.

**Source:** Laws 2003, LB 94, § 1; Laws 2007, LB333, § 1.

**81-15,237 Purposes of act.**

The purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act are to:

(1) Protect the air, water, and land of the state through the certification and regulation of private onsite wastewater treatment system professionals in Nebraska;

(2) Require certified professionals for siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, and pumping of private onsite wastewater treatment systems and require that all siting, layout,

construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping of any private onsite wastewater treatment system be done by certified professionals in accordance with the act and rules and regulations adopted under the act;

(3) Provide for the registration of all private onsite wastewater treatment systems constructed, reconstructed, altered, or modified after August 31, 2003;

(4) Provide for review of plans and specifications, issuance of permits and approvals, construction standards, and requirements necessary for proper operation and maintenance of all private onsite wastewater treatment systems;

(5) Protect the health and general welfare of the citizens of Nebraska; and

(6) Protect the air, water, and land of the state from potential pollution by providing for proper siting, layout, construction, closure, reconstruction, alteration, modification, repair, and pumping of private onsite wastewater treatment systems.

**Source:** Laws 2003, LB 94, § 2; Laws 2007, LB333, § 2.

**81-15,238 Definitions, where found.**

For purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, the definitions in sections 81-15,239 to 81-15,244 shall be used.

**Source:** Laws 2003, LB 94, § 3.

**81-15,239 Advisory committee, defined.**

Advisory committee means the Private Onsite Wastewater Treatment System Advisory Committee created in section 81-15,245.

**Source:** Laws 2003, LB 94, § 4.

**81-15,240 Certified professional, defined.**

Certified professional means a private onsite wastewater treatment system professional certified under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act to perform the tasks for which the certification has been issued.

**Source:** Laws 2003, LB 94, § 5.

**81-15,241 Council, defined.**

Council means the Environmental Quality Council.

**Source:** Laws 2003, LB 94, § 6.

**81-15,242 Department, defined.**

Department means the Department of Environmental Quality.

**Source:** Laws 2003, LB 94, § 7.

**81-15,243 Director, defined.**

Director means the Director of Environmental Quality.

**Source:** Laws 2003, LB 94, § 8.

**81-15,244 Private onsite wastewater treatment system, defined.**

Private onsite wastewater treatment system means any system of piping, treatment devices, or other appurtenances that convey, store, treat, or dispose of domestic or nondomestic wastewater, but not including wastewater from a livestock waste control facility, on the property where it originates or on nearby property under the control of the user, which system is not connected to a public sewer system.

**Source:** Laws 2003, LB 94, § 9.

**81-15,245 Private Onsite Wastewater Treatment System Advisory Committee; created; members; expenses.**

The Private Onsite Wastewater Treatment System Advisory Committee is created. The advisory committee shall be composed of the following eleven members:

- (1) Seven members appointed by the director as follows:
  - (a) Five private onsite wastewater treatment system professionals; and
  - (b) Two registered environmental health specialists or officials representing local public health departments which have established programs for regulating private onsite wastewater treatment systems;
- (2) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (3) The Director of Environmental Quality or his or her designated representative; and
- (4) One representative with experience in soils and geology and one representative with experience in biological engineering, both of whom shall be designated by the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources.

Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide administrative support for the advisory committee.

**Source:** Laws 2003, LB 94, § 10; Laws 2007, LB296, § 761.

**81-15,246 Advisory committee; duties.**

The advisory committee shall:

- (1) Meet not less often than annually as determined by the director. The director may call special meetings of the advisory committee;
- (2) Advise the department on proposed rules and regulations relating to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act;
- (3) Advise the department on rules and regulations for the siting, layout, operation, and maintenance of private onsite wastewater treatment systems; and
- (4) Advise the department on the administration of the act as requested by the director.

**Source:** Laws 2003, LB 94, § 11.

**81-15,247 Rules and regulations.**

The council shall adopt and promulgate rules and regulations to carry out the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. Such rules and regulations shall provide for, but not be limited to:

- (1) Certification of private onsite wastewater treatment system professionals;
- (2) Establishing categories for such professionals to be certified under the act;
- (3) Hardship certifications;
- (4) Examination requirements for certification;
- (5) Continuing education requirements for certification;
- (6) A fee schedule which covers direct and indirect costs to administer the act. Such costs include (a) system registration, late fees for system registration, application for certification, examination, and renewal, late fees for renewal, hardship certifications, fees for continuing education classes offered or approved by the department, and administration and enforcement and (b) development and enforcement of standards;
- (7) Requirements for the registration of private onsite wastewater treatment systems to be constructed, reconstructed, altered, modified, or inspected by professionals certified under the act; and
- (8) Requiring that all private onsite wastewater treatment system siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping be performed by certified professionals in accordance with the act, rules and regulations adopted under the act, and other rules and regulations adopted and promulgated by the council.

**Source:** Laws 2003, LB 94, § 12; Laws 2007, LB333, § 3.

**81-15,248 Private onsite wastewater treatment system; professional required; when; registration; inspection and registration; director; powers; waiver of fees authorized.**

(1) A private onsite wastewater treatment system shall not be sited, laid out, constructed, closed, reconstructed, altered, modified, repaired, inspected, or pumped unless the siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping is carried out or supervised by either a certified professional as required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, a professional engineer licensed in Nebraska, or a registered environmental health specialist registered in Nebraska.

(2) Any private onsite wastewater treatment system constructed, reconstructed, altered, or modified by a certified professional, professional engineer licensed in Nebraska, or registered environmental health specialist registered in Nebraska shall be registered with the department by the certified professional, professional engineer, or registered environmental health specialist within forty-five days of completion of the construction, reconstruction, alteration, or modification. The certified professional, professional engineer, or registered environmental health specialist shall submit the registration on forms provided by the department and shall include the registration fee. The registration fee shall be fifty dollars until rules and regulations adopted and promulgated under the act provide a schedule of system registration fees adequate to cover direct and indirect program costs.

(3) The director by contract may delegate onsite wastewater treatment system inspection and registration to a governmental subdivision which has adopted a program at least as stringent as the requirements provided by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act and which has demonstrated authority to administer and enforce its onsite wastewater treatment system inspection and registration program.

(4) The director may waive certification and examination fees for inspectors employed by a governmental agency or subdivision which has adopted and has the authority to enforce an inspection and compliance program at least as stringent as the standards for siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, and pumping provided by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act and rules and regulations under the act adopted and promulgated by the council.

**Source:** Laws 2003, LB 94, § 13; Laws 2004, LB 449, § 14; Laws 2007, LB333, § 4.

#### **81-15,248.01 Fee schedule.**

The council shall adopt and promulgate rules and regulations to develop a fee schedule which covers direct and indirect costs to administer requirements related to private onsite wastewater treatment systems authorized by the Environmental Protection Act. Such costs include costs related to review of submitted plans and specifications, issuance of permits and approvals, proper operation and maintenance, development and enforcement of standards, closure, and necessary administration and enforcement.

**Source:** Laws 2007, LB333, § 5.

#### **Cross References**

**Environmental Protection Act**, see section 81-1532.

#### **81-15,249 Certificate; grounds for discipline.**

The director may revoke, suspend, or refuse to grant or renew a certificate issued pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, following opportunity for hearing, upon any reasonable ground, including, but not limited to, the following: (1) The certificate holder has engaged in fraud or deception; (2) the certificate holder has failed to meet the requirements of the act, the Environmental Protection Act, or rules and regulations of the council; (3) the certificate holder is unable to properly perform duties required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act; (4) the certificate holder has failed to maintain the minimum requirements of a certificate holder under the act; (5) the certificate holder has failed to demonstrate the required continuing education proficiency under the act; or (6) the certificate holder has failed to perform any other requirements of a certificate holder in accordance with the act or the rules and regulations adopted under the act.

**Source:** Laws 2003, LB 94, § 14.

#### **Cross References**

**Environmental Protection Act**, see section 81-1532.

**81-15,250 Private Onsite Wastewater Treatment System Permit and Approval Cash Fund; created; investment.**

The Private Onsite Wastewater Treatment System Permit and Approval Cash Fund is created. Fees collected pursuant to section 81-15,248.01 shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department. Any money in the 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.

Any money remaining in the Private Onsite Wastewater Treatment System Cash Fund on March 8, 2007, shall be transferred to the Private Onsite Wastewater Treatment System Certification and Registration Cash Fund created under section 81-15,250.01 on such date.

**Source:** Laws 2003, LB 94, § 15; Laws 2007, LB333, § 6.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,250.01 Private Onsite Wastewater Treatment System Certification and Registration Cash Fund; created; investment.**

The Private Onsite Wastewater Treatment System Certification and Registration Cash Fund is created. Fees collected pursuant to sections 81-15,247 and 81-15,248 shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department. Any money in the 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.

**Source:** Laws 2007, LB333, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-15,251 Certified professionals; additional requirements.**

The requirements of sections 81-1506 to 81-1511 shall apply to certified professionals.

**Source:** Laws 2003, LB 94, § 16.

**81-15,252 Act; applicability.**

The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act does not apply to a private onsite wastewater treatment system at an electric generation facility site owned by a district organized under Chapter 70, article 6.

**Source:** Laws 2003, LB 94, § 17.

**81-15,253 Violation; penalty.**

Any person violating any provision of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act or rules and regulations adopted and promulgated pursuant to the act shall be subject to a civil penalty of not more than ten thousand dollars for each such violation.

In the case of a continuing violation, each day shall constitute a separate violation.

**Source:** Laws 2003, LB 94, § 18.

**ARTICLE 16  
STATE ENERGY OFFICE**

**Cross References**

**State buildings**, review of plans and specifications, see section 72-805.  
**Utility energy conservation loans**, see section 66-1009.

(a) STATE ENERGY OFFICE

Section

- 81-1601. State Energy Office; created; director; compensation; personnel.
- 81-1602. State Energy Office; duties; enumerated.
- 81-1603. State Energy Office; powers; enumerated.
- 81-1604. Repealed. Laws 1981, LB 545, § 52.
- 81-1605. State Energy Office; powers and duties; limitation.
- 81-1606. Director of the State Energy Office; energy statistics and information; develop and maintain; report.
- 81-1607. Director of the State Energy Office; comprehensive report; contents.
- 81-1607.01. State Energy Office Cash Fund; created; use; investment.

(b) LIGHTING AND THERMAL EFFICIENCY STANDARDS

- 81-1608. Uniform energy efficiency standards; legislative findings.
- 81-1609. Terms, defined.
- 81-1610. Repealed. Laws 2000, LB 1135, § 34.
- 81-1611. Nebraska Energy Code; adoption; alternative standards; used; when.
- 81-1612. State Energy Office; adopt rules and regulations.
- 81-1613. State Energy Office; produce manuals; contents.
- 81-1614. Nebraska Energy Code; applicability.
- 81-1615. Nebraska Energy Code; exemptions.
- 81-1616. Procedures for insuring compliance with Nebraska Energy Code; costs; appeal.
- 81-1617. Nebraska Energy Code; inspections and investigations necessary to enforce.
- 81-1618. Local lighting and thermal efficiency standards; conditions; fees; waiver; procedure.
- 81-1619. Repealed. Laws 1983, LB 124, § 26.
- 81-1620. State Energy Office; establish technical assistance program.
- 81-1621. Repealed. Laws 1983, LB 124, § 26.
- 81-1622. No local standard; contractor, architect, engineer; duties.
- 81-1623. State Energy Office Cash Fund; created; use.
- 81-1624. Repealed. Laws 1983, LB 124, § 26.
- 81-1625. Building; failure to comply with Nebraska Energy Code or equivalent standard; liability.
- 81-1626. Lighting and thermal efficiency; violation; penalty.

(c) ENERGY AUDITS

- 81-1627. Repealed. Laws 1985, LB 27, § 1.
- 81-1628. Repealed. Laws 1985, LB 27, § 1.
- 81-1629. Repealed. Laws 1985, LB 27, § 1.
- 81-1630. Repealed. Laws 1985, LB 27, § 1.
- 81-1631. Repealed. Laws 1985, LB 27, § 1.

(d) SCHOOL DISTRICT ENERGY EFFICIENCY LOANS AND GRANTS

- 81-1632. Repealed. Laws 1998, LB 892, § 3.
- 81-1633. Repealed. Laws 1998, LB 892, § 3.
- 81-1634. Repayment; use.

## Section

## (e) PETROLEUM OVERCHARGES

- 81-1635. Nebraska Energy Settlement Fund; established; source of funds; investment.
- 81-1636. Fund; plan for disbursement.
- 81-1637. Predisbursement plan; contents; hearing.
- 81-1638. State Energy Office; duties; political subdivision; application for disbursement.
- 81-1639. Disbursement of funds; requirements.
- 81-1640. Fund; proposed uses; hearing.
- 81-1641. Disbursement of funds; sections applicable.

## (f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

- 81-1642. Transferred to section 81-1183.
- 81-1643. Transferred to section 81-1184.
- 81-1644. Transferred to section 81-1185.
- 81-1645. Transferred to section 81-1186.
- 81-1646. Transferred to section 81-1187.
- 81-1647. Transferred to section 81-1188.
- 81-1648. Transferred to section 81-1189.

## (a) STATE ENERGY OFFICE

**81-1601 State Energy Office; created; director; compensation; personnel.**

(1) There is hereby created an agency of state government to be known as the State Energy Office. The office may be a separate division within an existing executive department.

(2) The chief executive officer shall be known as the Director of the State Energy Office and shall be appointed by the Governor with the advice and consent of the Legislature. The director shall administer the affairs of the office and shall serve at the pleasure of the Governor. The director may employ such assistants, professional staff, and other employees as may be deemed necessary to effectively carry out the provisions of sections 81-1601 to 81-1605 within such appropriations as the Legislature may provide. The salary of the director shall be fixed by the Governor unless otherwise expressly provided for by law.

**Source:** Laws 1977, LB 232, § 1.

**81-1602 State Energy Office; duties; enumerated.**

The State Energy Office shall have the following duties:

- (1) To serve as or assist in developing and coordinating a central repository within state government for the collection of data on energy;
- (2) To undertake a continuing assessment of the trends in the availability, consumption, and development of all forms of energy;
- (3) To collect and analyze data relating to present and future demands and resources for all sources of energy and to specify energy needs for the state;
- (4) To recommend to the Governor and the Legislature energy policies and conservation measures for the state and to carry out such measures as are adopted;
- (5) To provide for public dissemination of appropriate information on energy, energy sources, and energy conservation;

(6) To accept, expend, or disburse funds, public or private, made available to it for research studies, demonstration projects, or other activities which are related either to energy conservation or development;

(7) To study the impact and relationship of state energy policies to national and regional energy policies and engage in such activities as will reasonably insure that the State of Nebraska and its citizens receive an equitable share of energy supplies, including the administration of any federally mandated or state-mandated energy allocation programs;

(8) To actively seek the advice of the citizens of Nebraska regarding energy policies and programs;

(9) To prepare emergency allocation plans suggesting to the Governor actions to be taken in the event of serious shortages of energy;

(10) To design a state program for conservation of energy;

(11) To provide technical assistance to local subdivisions of government; and

(12) To provide technical assistance to private persons desiring information on energy conservation techniques and the use of renewable energy technologies.

**Source:** Laws 1977, LB 232, § 2; Laws 1980, LB 954, § 58; Laws 1990, LB 987, § 8; Laws 1992, LB 1257, § 96.

**81-1603 State Energy Office; powers; enumerated.**

The office shall have the power to do such things as are necessary to carry out sections 81-1601 to 81-1605, including but not limited to the following:

(1) To adopt rules and regulations, pursuant to the Administrative Procedure Act, to carry out the purposes of sections 81-1601 to 81-1605;

(2) To make all contracts pursuant to sections 81-1601 to 81-1605 and do all things to cooperate with the federal government, and to qualify for, accept, expend, and dispense public or private funds intended for the implementation of sections 81-1601 to 81-1605;

(3) To contract for services, if such work or services cannot be satisfactorily performed by employees of the agency or by any other part of state government;

(4) To enter into such agreements as are necessary to carry out energy research and development with other states;

(5) To carry out the duties and responsibilities relating to energy as may be requested or required of the state by the federal government;

(6) To cooperate and participate with the approval of the Governor in the activities of organizations of states relating to the availability, conservation, development, and distribution of energy;

(7) To engage in such activities as will seek to insure that the State of Nebraska and its citizens receive an equitable share of energy supplies at a fair price; and

(8) To form advisory committees of citizens of Nebraska to advise the director of the energy office on programs and policies relating to energy and to assist in implementing such programs. Such committees shall be of a temporary nature and no member shall receive any compensation for serving on any such committee but, with the approval of the Governor, members shall receive

reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees. The minutes of meetings of and actions taken by each committee shall be kept and a record shall be maintained of the name, address, and occupation or vocation of every individual serving on any committee. Such minutes and records shall be maintained in the State Energy Office and shall be available for public inspection during regular office hours.

**Source:** Laws 1977, LB 232, § 3; Laws 1981, LB 204, § 198.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-1604 Repealed. Laws 1981, LB 545, § 52.**

**81-1605 State Energy Office; powers and duties; limitation.**

Notwithstanding any provisions of sections 81-1601 to 81-1605, the State Energy Office shall not perform any duties or exercise any powers which are delegated to other agencies or subdivisions of state government.

**Source:** Laws 1977, LB 232, § 5.

**81-1606 Director of the State Energy Office; energy statistics and information; develop and maintain; report.**

The Director of the State Energy Office shall develop and maintain a program of collection, compilation, and analysis of energy statistics and information. Existing information reporting requests, maintained at the state and federal levels, shall be utilized whenever possible in any data collection required under the provisions of sections 81-1601 to 81-1607. A central state repository of energy data shall be developed and coordinated with other governmental data-collection and record-keeping programs. The director shall, on at least an annual basis, with monthly compilations, submit to the Governor and the Clerk of the Legislature a report identifying state energy consumption by fuel type and by use to the extent that such information is available. Nothing in this section shall be construed as permitting or authorizing the revealing of confidential information. For purposes of this section confidential information shall mean any process, formula, pattern, decision, or compilation of information which is used, directly or indirectly, in the business of the producer, refiner, distributor, transporter, or vendor, and which gives such producer, refiner, distributor, transporter, or vendor an advantage or an opportunity to obtain an advantage over competitors who do not know or use it.

**Source:** Laws 1980, LB 954, § 57; Laws 1983, LB 124, § 9.

**81-1607 Director of the State Energy Office; comprehensive report; contents.**

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

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

- (a) An assessment of the state's energy resources, including examination of the current energy supplies and any feasible alternative sources;
- (b) The estimated reduction in annual energy consumption resulting from various energy conservation measures;
- (c) The status of the office's ongoing studies;
- (d) Recommendations to the Governor and the Legislature for administrative and legislative actions to accomplish the purposes of sections 70-625, 70-704, 81-161, 81-1602, 81-1606, and 81-1607; and
- (e) The use of funds disbursed during the previous year under sections 81-1635 to 81-1641. The use of such funds shall be reported each year until the funds are completely disbursed and all contractual obligations have expired or otherwise terminated.

**Source:** Laws 1980, LB 954, § 59; Laws 1987, LB 23, § 3; Laws 1988, LB 764, § 1.

**81-1607.01 State Energy Office Cash Fund; created; use; investment.**

The State Energy Office Cash Fund is hereby created. The fund shall consist of funds received pursuant to section 57-705. The fund shall be used for the administration of sections 81-1601 to 81-1607, for energy conservation activities, and for providing technical assistance to communities in the area of natural gas other than assistance regarding ownership of regulated utilities. Any money in the 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.

**Source:** Laws 1989, LB 727, § 3; Laws 1994, LB 1066, § 126.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

(b) LIGHTING AND THERMAL EFFICIENCY STANDARDS

**81-1608 Uniform energy efficiency standards; legislative findings.**

The Legislature finds that consumers have an expectation that newly built houses or buildings they buy meet uniform energy efficiency standards. Therefore, the Legislature finds that there is a need to adopt the 2003 International Energy Conservation Code in order (1) to ensure that a minimum energy efficiency standard is maintained throughout the state, (2) to harmonize and clarify energy building code statutory references, (3) to ensure compliance with the National Energy Policy Act of 1992, (4) to increase energy savings for all Nebraska consumers, especially low-income Nebraskans, (5) to reduce the cost of state programs that provide assistance to low-income Nebraskans, (6) to reduce the amount of money expended to import energy, (7) to reduce the growth of energy consumption, (8) to lessen the need for new power plants, and (9) to provide training for local code officials and residential and commercial builders who implement the 2003 International Energy Conservation Code.

**Source:** Laws 1980, LB 954, § 32; Laws 2004, LB 888, § 4.

**81-1609 Terms, defined.**

As used in sections 81-1608 to 81-1626, unless the context otherwise requires:

- (1) Office means the State Energy Office;
- (2) Contractor means the person or entity responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building;
- (3) Architect or engineer means any person licensed as an architect or professional engineer under the Engineers and Architects Regulation Act;
- (4) Building means any new structure, renovated building, or addition which provides facilities or shelter for public assembly, educational, business, mercantile, institutional, warehouse, or residential occupancies, as well as those portions of factory and industrial facilities which are used primarily for human occupancy, such as office space, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one watt per square foot;
- (5) Residential building means a building three stories or less that is used primarily as one or more dwelling units;
- (6) Renovation means alterations on an existing building which will cost more than fifty percent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included;
- (7) Addition means an extension or increase in the height, conditioned floor area, or conditioned volume of a building or structure;
- (8) Floor area means the total area of the floor or floors of a building, expressed in square feet, which is within the exterior faces of the shell of the structure which is heated or cooled;
- (9) Nebraska Energy Code means the 2003 International Energy Conservation Code;
- (10) Traditional energy sources means electricity, petroleum-based fuels, uranium, coal, and all nonrenewable forms of energy; and
- (11) Equivalent or equivalent code means standards that meet or exceed the requirements of the Nebraska Energy Code.

**Source:** Laws 1980, LB 954, § 33; Laws 1982, LB 799, § 6; Laws 1983, LB 124, § 10; Laws 1997, LB 622, § 126; Laws 2000, LB 1135, § 25; Laws 2004, LB 888, § 5.

**Cross References**

**Engineers and Architects Regulation Act**, see section 81-3401.

**81-1610 Repealed. Laws 2000, LB 1135, § 34.**

**81-1611 Nebraska Energy Code; adoption; alternative standards; used; when.**

The Legislature hereby adopts the 2003 International Energy Conservation Code as the Nebraska Energy Code. The State Energy Office may adopt regulations specifying alternative standards for building systems, techniques, equipment designs, or building materials that shall be deemed equivalent to the Nebraska Energy Code. Regulations specifying alternative standards may be deemed equivalent to the Nebraska Energy Code and may be approved for general or limited use if the use of such alternative standards would not result

in energy consumption greater than would result from the strict application of the Nebraska Energy Code.

**Source:** Laws 1980, LB 954, § 35; Laws 1983, LB 124, § 12; Laws 2000, LB 1135, § 26; Laws 2004, LB 888, § 6.

**81-1612 State Energy Office; adopt rules and regulations.**

The State Energy Office shall adopt and promulgate rules and regulations for implementation and administration of sections 81-1608 to 81-1626. Rules, regulations, or amendments thereto shall be adopted pursuant to the Administrative Procedure Act.

**Source:** Laws 1980, LB 954, § 36; Laws 1981, LB 2, § 1; Laws 1983, LB 124, § 13; Laws 2000, LB 1135, § 27.

**Cross References**

Administrative Procedure Act, see section 84-920.

**81-1613 State Energy Office; produce manuals; contents.**

The State Energy Office shall produce manuals for use by architects, engineers, prime contractors, and owners. Such manuals shall be furnished upon request at a price sufficient to cover the costs of production. Such manuals shall contain, but not be limited to:

- (1) The Nebraska Energy Code;
- (2) Forms, charts, tables, and other data to assist architects, engineers, and prime contractors in meeting the Nebraska Energy Code; and
- (3) Any other information which the office determines will assist local code officials in enforcing the code.

**Source:** Laws 1980, LB 954, § 37; Laws 1983, LB 124, § 14; Laws 2004, LB 888, § 7.

**81-1614 Nebraska Energy Code; applicability.**

The Nebraska Energy Code shall apply to all new buildings, or renovations of or additions to any existing buildings, on which construction is initiated on or after July 1, 2005.

**Source:** Laws 1980, LB 954, § 38; Laws 1981, LB 2, § 2; Laws 1983, LB 124, § 15; Laws 2004, LB 888, § 8.

**81-1615 Nebraska Energy Code; exemptions.**

The following shall be exempt from sections 81-1608 to 81-1626:

- (1) Any building which has a peak design rate of energy usage for all purposes of less than one watt, or three and four-tenths British Thermal Units per hour, per square foot of floor area;
- (2) Any building which is neither heated nor cooled;
- (3) Any building or portion thereof which is owned by the United States of America;
- (4) Any manufactured home as defined by section 71-4603;
- (5) Any modular housing unit as defined by subdivision (1) of section 71-1557; and

(6) Any building (a) listed on the National Register of Historic Places, (b) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (c) designated as an individual landmark or heritage preservation site by a municipality or located within a designated landmark or heritage preservation district.

**Source:** Laws 1980, LB 954, § 39; Laws 1983, LB 124, § 16; Laws 1985, LB 313, § 30; Laws 2004, LB 888, § 9.

**81-1616 Procedures for insuring compliance with Nebraska Energy Code; costs; appeal.**

For purposes of insuring compliance with section 81-1614:

(1) The office, or its authorized agent, may conduct such inspections and investigations as are necessary to make a determination pursuant to section 81-1625 and may issue an order containing and resulting from the findings of such inspections and investigations; and

(2) A building owner may submit a written request that the office undertake a determination pursuant to subdivision (1) of this section. Such request shall include a list of reasons why the building owner believes such a determination is necessary.

A building owner aggrieved by the office's determination, or refusal to make such determination, may appeal such determination or refusal as provided in the Administrative Procedure Act.

The office may charge an amount sufficient to recover the costs of providing such determinations.

Buildings located in a county, city, or village which has adopted the Nebraska Energy Code or equivalent code pursuant to section 81-1618, and constructed after the adoption of such code, shall be exempt from the provisions of this section.

**Source:** Laws 1980, LB 954, § 40; Laws 1981, LB 799, § 7; Laws 1983, LB 124, § 17; Laws 2000, LB 1135, § 28; Laws 2004, LB 888, § 10.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-1617 Nebraska Energy Code; inspections and investigations necessary to enforce.**

The State Energy Office and any local code authority may conduct inspections and investigations necessary to enforce the Nebraska Energy Code or equivalent code and may, at reasonable hours, enter into any building and upon any premises within its jurisdiction for the purpose of examination to determine compliance with sections 81-1608 to 81-1626. Inspections shall be conducted only after permission has been granted by the owner or occupant or after a warrant has been issued pursuant to sections 29-830 to 29-835.

**Source:** Laws 1980, LB 954, § 41; Laws 1981, LB 2, § 3; Laws 1983, LB 124, § 18; Laws 2004, LB 888, § 11.

**81-1618 Local lighting and thermal efficiency standards; conditions; fees; waiver; procedure.**

Any county, city, or village may adopt and enforce a lighting and thermal efficiency ordinance, resolution, code, or standard. Such ordinance, resolution, code, or standard shall be deemed equivalent to the Nebraska Energy Code if it does not result in energy consumption greater than would result from the strict application of the Nebraska Energy Code and is reasonably consistent with the intent of sections 81-1608 to 81-1626. Any building or portion thereof subject to the jurisdiction of and inspected by such county, city, or village shall be deemed to comply with sections 81-1608 to 81-1626 if it meets the standards of such ordinance, resolution, code, or standards. Such county, city, or village may by ordinance or resolution prescribe a schedule of fees sufficient to pay the costs incurred pursuant to sections 81-1608 to 81-1626.

Any county, city, or village which adopts and enforces a lighting and thermal efficiency ordinance, resolution, code, or standard may waive a specific requirement of the Nebraska Energy Code when meeting such requirement is not economically justified. The local code authority shall submit to the State Energy Office its analysis for determining that a specific requirement is not justified. The State Energy Office shall review such analysis and transmit its findings and conclusions to the local code authority within a reasonable time. The local code authority shall submit to the State Energy Office its explanation as to how the original code or any revised code addresses the issues raised by the State Energy Office. After a local code authority has submitted such explanation, the authority may proceed to enforce its ordinance, resolution, code, or standard.

**Source:** Laws 1980, LB 954, § 42; Laws 1981, LB 2, § 4; Laws 1983, LB 124, § 19; Laws 2004, LB 888, § 12.

**81-1619 Repealed. Laws 1983, LB 124, § 26.**

**81-1620 State Energy Office; establish technical assistance program.**

The State Energy Office shall establish a continuing program to provide technical assistance to local code officials and residential and commercial builders. The program shall include the training of local code officials in building technology and local enforcement procedure related to implementation of the Nebraska Energy Code and the development of training programs suitable for presentation by local governments, educational institutions, and other public or private entities.

**Source:** Laws 1980, LB 954, § 44; Laws 1983, LB 124, § 20; Laws 2004, LB 888, § 13.

**81-1621 Repealed. Laws 1983, LB 124, § 26.**

**81-1622 No local standard; contractor, architect, engineer; duties.**

Prior to the construction, renovation, or addition to any existing building after the dates specified in section 81-1614 the following requirements shall be met where a county, city, or village has not adopted an ordinance, resolution, code, or standard pursuant to section 81-1618:

(1) When no architect or engineer is retained, the prime contractor shall build or cause to be built, to the best of his or her knowledge, according to the Nebraska Energy Code; and

(2) When an architect or engineer is retained: (a) The architect or engineer shall place his or her state registration seal on all construction drawings which

shall indicate that the design meets the Nebraska Energy Code and (b) the prime contractor responsible for the actual construction shall build or cause to be built in accordance with the construction documents prepared by the architect or engineer.

**Source:** Laws 1980, LB 954, § 46; Laws 1983, LB 124, § 21; Laws 2004, LB 888, § 14.

**81-1623 State Energy Office Cash Fund; created; use.**

The fees deposited in the State Energy Office Cash Fund, which is hereby created, shall be used only for costs incident to carry out sections 66-1001 to 66-1011, 70-625, 70-704, 81-161, 81-1602, 81-1606 to 81-1626, and 84-162 to 84-167.

**Source:** Laws 1980, LB 954, § 47; Laws 1982, LB 799, § 11; Laws 1983, LB 124, § 22.

**81-1624 Repealed. Laws 1983, LB 124, § 26.**

**81-1625 Building; failure to comply with Nebraska Energy Code or equivalent standard; liability.**

If the Director of the State Energy Office or the local code authority finds, within two years from the date a building is first occupied, that the building, at the time of construction, did not comply with the Nebraska Energy Code or equivalent code adopted by a county, city, or village in effect at such time, the director or code authority may order the owner or prime contractor to take those actions necessary to bring the building into compliance. This section does not limit the right of the owner to bring civil action against the contractor, architect, or engineer for the cost of bringing the building into compliance.

**Source:** Laws 1980, LB 954, § 49; Laws 1983, LB 124, § 23; Laws 2004, LB 888, § 15.

**81-1626 Lighting and thermal efficiency; violation; penalty.**

Failure to comply with sections 81-1608 to 81-1626 or ordering, instructing, or directing another not to comply with sections 81-1608 to 81-1626 shall be a Class IV misdemeanor.

**Source:** Laws 1980, LB 954, § 50.

(c) ENERGY AUDITS

**81-1627 Repealed. Laws 1985, LB 27, § 1.**

**81-1628 Repealed. Laws 1985, LB 27, § 1.**

**81-1629 Repealed. Laws 1985, LB 27, § 1.**

**81-1630 Repealed. Laws 1985, LB 27, § 1.**

**81-1631 Repealed. Laws 1985, LB 27, § 1.**

(d) SCHOOL DISTRICT ENERGY EFFICIENCY LOANS AND GRANTS

**81-1632 Repealed. Laws 1998, LB 892, § 3.**

**81-1633 Repealed. Laws 1998, LB 892, § 3.****81-1634 Repayment; use.**

Funds received in repayment for energy efficiency loans from the School Weatherization Fund shall be credited to the General Fund. For each fiscal year in which there are any outstanding loans, the Legislature shall designate a portion of the funds received in repayment for energy efficiency loans for use by the State Energy Office to cover the actual cost of administering outstanding loans.

**Source:** Laws 1981, LB 257, § 7; Laws 1982, LB 799, § 16; Laws 1985, LB 6, § 6; Laws 1985, LB 126, § 4; Laws 1989, LB 727, § 5; Laws 1995, LB 860, § 4; Laws 1998, LB 892, § 1; Laws 2002, Second Spec. Sess., LB 6, § 2; Laws 2006, LB 1208, § 26.

## (e) PETROLEUM OVERCHARGES

**81-1635 Nebraska Energy Settlement Fund; established; source of funds; investment.**

There is hereby established in the state treasury a fund, to be known as the Nebraska Energy Settlement Fund and referred to in sections 81-1635 to 81-1641 as the fund, to be administered by the State Energy Office as the representative of the Governor. The fund shall consist of (1) money received by the State of Nebraska after February 15, 1986, from awards or allocations to the State of Nebraska on behalf of consumers of petroleum products as a result of judgments or settlements for overcharges to consumers of petroleum products sold during the period of time in which federal price controls on such products were in effect and (2) any investment interest earned on the fund. The Department of Administrative Services may for accounting purposes create subfunds of the fund to segregate awards or allocations received pursuant to different orders or settlements. Any money in the 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. No money shall be transferred or disbursed from the fund except pursuant to sections 81-1635 to 81-1641.

**Source:** Laws 1987, LB 683, § 1; Laws 1995, LB 7, § 131.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-1636 Fund; plan for disbursement.**

The Governor or the State Energy Office as representative of the Governor shall develop a plan for the disbursement of the money credited to the fund for submission to the United States Department of Energy. The plan shall be in accordance with the specifications and guidelines of the applicable federal court order and any applicable federal law or regulations.

**Source:** Laws 1987, LB 683, § 2; Laws 1988, LB 764, § 2.

**81-1637 Predisbursement plan; contents; hearing.**

(1) The Governor shall submit a predisbursement plan to the Legislature if in session or the Executive Board of the Legislative Council if the Legislature is not in session.

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

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

(4) The Legislature may hold a public hearing within thirty days of receipt of the predisbursement plan to solicit testimony on such plan. The Legislature may, no later than fifteen days following such hearing, make recommendations to the State Energy Office concerning the plan. No disbursement of or obligation to disburse any money in the fund shall be made after July 9, 1988, until forty-five days after the predisbursement plan referring to such disbursement has been submitted to the Legislature or the Executive Board of the Legislative Council, as the case may be.

**Source:** Laws 1987, LB 683, § 3; Laws 1988, LB 764, § 3.

**81-1638 State Energy Office; duties; political subdivision; application for disbursement.**

(1) The State Energy Office shall, as the representative of and under the direction of the Governor, be the administrative agency for the selection of projects pursuant to section 81-1636, allocation of funds to the projects, and monitoring of the uses of the funds so allocated.

(2) The State Energy Office shall contract with any and all grantees of funds in and recipients of loans from the fund. The contracts shall include provisions for reporting on and accounting for the use of the funds by the grantee or loan recipient to the State Energy Office, and any contracts or agreements entered into before appropriations are made by the Legislature shall recite that they are subject to appropriations of the fund by the Legislature.

(3) Any political subdivision of this state may apply for, and shall be eligible to receive, a disbursement for a project pursuant to section 81-1636, including a disbursement of loan proceeds.

**Source:** Laws 1987, LB 683, § 4; Laws 1993, LB 479, § 4.

**81-1639 Disbursement of funds; requirements.**

No money shall be disbursed or expended from the fund unless:

- (1) The disbursement is pursuant to an appropriation by the Legislature;
- (2) The provisions of section 81-1636 have been complied with in regard to the project for which funds are being disbursed; and
- (3) The use for which funds are being disbursed meets any applicable federal law, regulation, or court order and has been approved by any and all state and

federal authorities as may be required to meet the applicable court order and any applicable federal law or regulations.

**Source:** Laws 1987, LB 683, § 5; Laws 1988, LB 764, § 4.

**81-1640 Fund; proposed uses; hearing.**

The State Energy Office shall conduct a public hearing on the proposed uses of the fund in the manner and to the extent required by specifications and guidelines of the applicable federal court order and any applicable federal law or regulations.

**Source:** Laws 1987, LB 683, § 6; Laws 1988, LB 764, § 5.

**81-1641 Disbursement of funds; sections applicable.**

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

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

**Source:** Laws 1987, LB 683, § 7; Laws 1988, LB 764, § 6.

(f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

**81-1642 Transferred to section 81-1183.**

**81-1643 Transferred to section 81-1184.**

**81-1644 Transferred to section 81-1185.**

**81-1645 Transferred to section 81-1186.**

**81-1646 Transferred to section 81-1187.**

**81-1647 Transferred to section 81-1188.**

**81-1648 Transferred to section 81-1189.**

**ARTICLE 17**

**NEBRASKA CONSULTANTS' COMPETITIVE NEGOTIATION ACT**

**Cross References**

**Engineers and Architects Regulation Act**, see section 81-3401.

**Geologists Regulation Act**, see section 81-3501.

**Regulation of land surveyors**, see sections 81-8,108 to 81-8,127.

**Section**

- 81-1701. Act, purpose.
- 81-1702. Act, how cited.
- 81-1703. Definitions; sections applicable.
- 81-1704. Professional services, defined.
- 81-1705. Agency, defined.
- 81-1706. Firm, defined.
- 81-1707. Compensation, defined.
- 81-1708. Agency official, defined.
- 81-1709. Project, defined.

- Section
- 81-1710. Continuing contract, defined.
- 81-1711. Department of Administrative Services; Department of Roads; project; procedures.
- 81-1712. Project; professional services required; notice; qualifications and performance data; statements; certification; procedures; Department of Administrative Services; adopt.
- 81-1713. Project; professional services; qualifications; agency; evaluation; selection; considerations.
- 81-1714. Sections, how construed.
- 81-1715. Professional services; agency; negotiate contract; procedure; failure to contract; effect.
- 81-1716. Professional services; contract; contingent fees; prohibited; penalty.
- 81-1717. Agency contract for professional services; prohibited acts; penalty.
- 81-1718. Professional services; contract; improper action; penalty.
- 81-1719. Professional services; contract; agency official; conflict of interest; penalty.
- 81-1720. Professional services; selection process; notice; when not required.
- 81-1721. Existing contracts; validity; unaffected.

**81-1701 Act, purpose.**

The purpose of sections 81-1701 to 81-1721 is to provide managerial control over competitive negotiations by the state for acquisition of professional architectural, engineering, landscape architecture, or land surveying services.

**Source:** Laws 1978, LB 715, § 1.

**81-1702 Act, how cited.**

Sections 81-1701 to 81-1721 shall be known and may be cited as the Nebraska Consultants' Competitive Negotiation Act.

**Source:** Laws 1978, LB 715, § 2.

**81-1703 Definitions; sections applicable.**

For purposes of sections 81-1701 to 81-1721, unless the context otherwise requires, the definitions found in sections 81-1704 to 81-1710 shall be used.

**Source:** Laws 1978, LB 715, § 3.

**81-1704 Professional services, defined.**

Professional services shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment practice.

**Source:** Laws 1978, LB 715, § 4.

**81-1705 Agency, defined.**

Agency shall mean each board, commission, bureau, council, department, officer, division, the University of Nebraska, the Nebraska state colleges, or other administrative office or unit of state government.

**Source:** Laws 1978, LB 715, § 5.

**81-1706 Firm, defined.**

Firm shall mean any individual, partnership, limited liability company, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architecture, or land surveying in the state.

**Source:** Laws 1978, LB 715, § 6; Laws 1993, LB 121, § 543.

**81-1707 Compensation, defined.**

Compensation shall mean the total amount paid by the agency for professional services.

**Source:** Laws 1978, LB 715, § 7.

**81-1708 Agency official, defined.**

Agency official shall mean any elected or appointed officeholder, employee, consultant, person in the category of other personal service, or any other person receiving compensation from a state agency.

**Source:** Laws 1978, LB 715, § 8.

**81-1709 Project, defined.**

Project shall mean that fixed capital outlay, study, or planning activity, except renewal work as defined in section 81-173, described in the public notice of a state agency.

**Source:** Laws 1978, LB 715, § 9.

**81-1710 Continuing contract, defined.**

Continuing contract shall mean a contract for professional services entered into in accordance with the procedures of sections 81-1701 to 81-1721 between an agency and a firm whereby the firm provides professional services to the agency for work of a specified nature as outlined in the contract required by the agency with no time limitation. Any such contract shall provide a termination clause.

**Source:** Laws 1978, LB 715, § 10.

**81-1711 Department of Administrative Services; Department of Roads; project; procedures.**

The Department of Administrative Services shall, with the advice of each agency, prescribe by administrative rules procedures for the determination of a project under its jurisdiction. The Department of Roads shall prescribe such procedures for highway construction projects. Such procedures may include:

- (1) Determination of a project which constitutes a grouping of minor construction, rehabilitation, or renovation activities; and
- (2) Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation, or renovation activities.

**Source:** Laws 1978, LB 715, § 11.

**81-1712 Project; professional services required; notice; qualifications and performance data; statements; certification; procedures; Department of Administrative Services; adopt.**

(1) Public notice shall be given by each agency, in a uniform and consistent manner, when professional services are required to be contracted for a project whose basic construction cost is estimated by the agency to be more than four hundred thousand dollars and for professional services when the estimated fee for such professional services exceeds forty thousand dollars, except in cases of public emergencies so certified by the agency head. The Department of Administrative Services shall adjust the dollar amounts in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department. The public notice shall include a general description of the project and shall indicate how interested firms can apply for consideration for such contract.

(2) Each agency shall encourage firms engaged in the lawful practice of their profession who desire to provide professional services to the agency to submit annually a statement of qualifications and performance data. The agency may request a firm to update the file statement before the anniversary date to reflect changed conditions of the firm.

(3) Any firm desiring to provide professional services to an agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency shall make a finding that the firm to be employed is fully qualified to render the required service. Factors to be considered in making this finding shall include capabilities to perform, adequacy of personnel, past record and performance, and experience.

(4) The Department of Administrative Services shall, with the advice of each agency, adopt administrative procedures for the evaluation of professional services, including capabilities to perform, adequacy of personnel, past record and performance, experience, and such other factors as may be determined by the agency to be applicable to its particular requirements.

(5) The public shall not be excluded from the meetings or proceedings under this section in accordance with the Open Meetings Act.

**Source:** Laws 1978, LB 715, § 12; Laws 1998, LB 1129, § 25; Laws 2004, LB 821, § 33.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**81-1713 Project; professional services; qualifications; agency; evaluation; selection; considerations.**

(1) For each proposed project, the agency or a committee designated by the agency shall evaluate current statements of qualifications and performance data of firms as are on file with the agency, together with those that may be submitted by firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by no less than three firms, regarding their qualifications, approach to the project, and ability to furnish the required service.

(2) Any committee designated by the agency shall have among its membership at least one person whose profession represents that particular field of endeavor being considered.

(3) The agency or committee designated by the agency shall select, in order of preference, no less than three firms deemed to be most highly qualified to perform the required services after considering such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, recent, current and projected workloads of the firms, and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, as long as such distribution does not violate the principle of selection of the most highly qualified firms.

(4) This section shall not apply to professional service contracts for (a) a project whose basic construction cost is estimated by the agency to be four hundred thousand dollars or less or (b) a planning or study activity when the estimated fee for professional services is forty thousand dollars or less. The Department of Administrative Services shall adjust the dollar amounts in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department.

**Source:** Laws 1978, LB 715, § 13; Laws 1998, LB 1129, § 26.

**81-1714 Sections, how construed.**

Nothing in sections 81-1701 to 81-1721 shall be construed to prohibit continuing contracts between firm and agency.

**Source:** Laws 1978, LB 715, § 14.

**81-1715 Professional services; agency; negotiate contract; procedure; failure to contract; effect.**

(1) The agency or the committee designated by the agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair and reasonable. In making such determination, the agency or committee designated by the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For all lump-sum or cost-plus-a-fixed-fee professional service contracts, the agency or committee designated by the agency shall require the firm receiving the award to execute a certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency or committee designated by the agency determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(2) Should the agency or committee designated by the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency or committee designated by the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The agency or committee designated by the agency shall then undertake negotiations with the second most qualified firm. Failing to reach an

agreement with the second most qualified firm, the agency or committee designated by the agency shall terminate negotiations with such firm. The agency or committee designated by the agency shall then undertake negotiations with the third most qualified firm.

(3) Should the agency or committee designated by the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency or committee designated by the agency shall either select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached or review the agreement under negotiation to determine the possible cause for failure to achieve a negotiated agreement.

**Source:** Laws 1978, LB 715, § 15.

**81-1716 Professional services; contract; contingent fees; prohibited; penalty.**

(1) Each contract for professional services entered into by the agency shall contain a prohibition against contingent fees as follows: The architect, or registered land surveyor, professional engineer, or landscape architect, as applicable, warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or the making of this agreement.

(2) Upon violation of this section, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, or consideration.

**Source:** Laws 1978, LB 715, § 16.

**81-1717 Agency contract for professional services; prohibited acts; penalty.**

Any firm, other than a bona fide employee working solely for an architect, professional engineer, registered land surveyor, or landscape architect, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other company or firm for or who is paid any fee, commission, percentage, gift, or any other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction, be guilty of a Class I misdemeanor.

**Source:** Laws 1978, LB 715, § 17.

**81-1718 Professional services; contract; improper action; penalty.**

Any architect, professional engineer, registered land surveyor, or landscape architect, or any group, company, or firm who shall offer to pay, or pay, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction, be guilty of a Class I misdemeanor.

**Source:** Laws 1978, LB 715, § 18.

**81-1719 Professional services; contract; agency official; conflict of interest; penalty.**

Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon the award or making of such a contract for professional services between the agency and any company or firm shall, upon conviction, be guilty of a Class I misdemeanor.

**Source:** Laws 1978, LB 715, § 19.

**81-1720 Professional services; selection process; notice; when not required.**

Notwithstanding any other provision of sections 81-1701 to 81-1721, there shall be no public notice requirement or utilization of the selection process as provided in sections 81-1701 to 81-1721 for projects in which the agency is able to reuse existing drawings, specifications, and other documents from a prior project.

**Source:** Laws 1978, LB 715, § 20.

**81-1721 Existing contracts; validity; unaffected.**

Nothing in sections 81-1701 to 81-1721 shall affect the validity of any contracts in existence on July 22, 1978.

**Source:** Laws 1978, LB 715, § 21.

**ARTICLE 18**

**CRIME VICTIMS AND WITNESSES**

**Cross References**

**Constitutional provision:**

Crime victims rights enumerated, see Article I, section 28, Constitution of Nebraska.  
**Children**, promoting, facilitating, and preserving testimony, see sections 29-1925 and 29-1926.  
**Restitution**, procedures, effect, see sections 29-2280 to 29-2289.

(a) CRIME VICTIM'S REPARATIONS

Section	
81-1801.	Terms, defined.
81-1801.01.	Legislative intent.
81-1802.	Crime Victim's Reparations Committee; created; members.
81-1803.	Committee; members; appointment; terms.
81-1804.	Committee; members; vacancy.
81-1805.	Committee; members; expenses.
81-1806.	Committee; hearing officers; appointment.
81-1807.	Victim; compensation; application.
81-1808.	Victim; compensation; submit medical reports; hearing officer; order.
81-1809.	Application; hearing officer; decision; hearing; procedure; review.
81-1810.	Committee or hearing officer; proceedings; powers; applicants; rights.
81-1811.	Offense; proof of conviction; how treated.
81-1812.	Hearing officer or committee; order; determine and allow attorney's fees.
81-1813.	Committee; adopt rules and regulations; forms and materials; provide.
81-1814.	Compensation; committee; formulate standards for uniform application.
81-1815.	Compensation; to whom paid.
81-1816.	Committee or hearing officer; order; considerations; suspend proceedings; when.
81-1817.	Compensation awarded; collateral compensation; how treated.
81-1818.	Personal injury or death; situations for which compensation is permitted.
81-1819.	Payment of compensation; order; losses covered.
81-1820.	Hearing officer; emergency award of compensation; when; conditions; review.

- Section
- 81-1821. Application; statute of limitations.
  - 81-1822. Compensation; situations when not awarded.
  - 81-1823. Award; limitations; how paid.
  - 81-1824. Excluded incidents.
  - 81-1825. Committee; subrogation rights.
  - 81-1826. Department of Correctional Services; confined persons; provide for employment.
  - 81-1827. Business enterprise; employment of persons committed to the department.
  - 81-1828. Repealed. Laws 1980, LB 319, § 12.
  - 81-1829. Department of Correctional Services; establish and maintain farms.
  - 81-1830. False claim; penalty.
  - 81-1831. Right of action; abate; exception.
  - 81-1832. Appeal; procedure.
  - 81-1833. Committee; report; contents.
  - 81-1834. Award; payment.
  - 81-1835. Victim's Compensation Fund; established; purpose; investment.
  - 81-1836. Person convicted of crime; payments received; deposited in fund.
  - 81-1837. Money in Victim's Compensation Fund; returned; when.
  - 81-1838. Five-year period; when commenced.
  - 81-1839. Committee; payments from fund for legal representation; when.
  - 81-1840. Action to defeat purpose of act; null and void.
  - 81-1840.01. State or political subdivision; failure to act; effect.
  - 81-1841. Act, how cited.
  - 81-1842. Sexual assault victim; records; confidential.
- (b) CRIME VICTIMS AND WITNESSES ASSISTANCE
- 81-1843. Legislative findings.
  - 81-1844. Crime Victim and Witness Assistance Fund; created; administration; use.
  - 81-1844.01. Pamphlet on rights and procedures; distribution.
  - 81-1845. Victim and witness assistance center; selection and establishment; Nebraska Commission on Law Enforcement and Criminal Justice; duties; funding.
  - 81-1846. Victim and witness assistance centers; purposes.
  - 81-1847. Victim and witness assistance centers; services provided.
  - 81-1848. Victims and witnesses of crimes; rights; enumerated.
  - 81-1848.01. Appeal; notification required.
  - 81-1848.02. Escape; notification required.
  - 81-1848.03. Victim's rights; waiver.
  - 81-1849. Victim; duty.
  - 81-1850. County attorney; Board of Parole; Department of Correctional Services; county corrections agency; Department of Health and Human Services; duties; notification of victim.
  - 81-1851. Legislative intent.

(a) CRIME VICTIM'S REPARATIONS

**81-1801 Terms, defined.**

For purposes of the Nebraska Crime Victim's Reparations Act, unless the context otherwise requires:

- (1) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice;
- (2) Committee shall mean the Crime Victim's Reparations Committee;
- (3) Dependent shall mean a relative of a deceased victim who was dependent upon the victim's income at the time of death, including a child of a victim born after a victim's death;
- (4) Executive director shall mean the executive director of the commission;

(5) Personal injury shall mean actual bodily harm;

(6) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parent; and

(7) Victim shall mean a person who is injured or killed as a result of conduct specified in section 81-1818.

**Source:** Laws 1978, LB 910, § 1; Laws 1981, LB 328, § 4; Laws 1986, LB 540, § 2; Laws 1991, LB 186, § 1.

**81-1801.01 Legislative intent.**

It is the intent of the Legislature that the Nebraska Crime Victim's Reparations Act be construed as enabling the rights set forth in Article I, section 28, of the Constitution of Nebraska.

**Source:** Laws 2004, LB 270, § 5.

**81-1802 Crime Victim's Reparations Committee; created; members.**

A Crime Victim's Reparations Committee is hereby created. The committee shall consist of five members of the commission to be appointed by the Governor subject to approval by the Legislature. The members of the committee shall select a chairperson who is a member of the committee.

**Source:** Laws 1978, LB 910, § 2; Laws 1981, LB 328, § 5; Laws 1986, LB 540, § 3.

**81-1803 Committee; members; appointment; terms.**

Members of the committee shall serve for terms of four years, except that of the members first appointed two shall be appointed for terms of two years and three for terms of four years.

**Source:** Laws 1978, LB 910, § 3; Laws 1986, LB 540, § 4.

**81-1804 Committee; members; vacancy.**

When a vacancy occurs on the committee, appointment to fill the vacancy shall be made for the balance of the term. As the terms of the initial appointees to the committee expire, succeeding appointees shall be appointed to four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed.

**Source:** Laws 1978, LB 910, § 4; Laws 1986, LB 540, § 5.

**81-1805 Committee; members; expenses.**

Members of the committee shall receive no reimbursement for the performance of their duties as members of the committee, except that such members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1978, LB 910, § 5; Laws 1981, LB 204, § 199; Laws 1986, LB 540, § 6.

**81-1806 Committee; hearing officers; appointment.**

The executive director may serve as a hearing officer pursuant to this section and in addition the committee, with the approval of the commission, shall

appoint one or more additional hearing officers, who shall be licensed to practice law in the state, to conduct hearings, take testimony in proceedings under the Nebraska Crime Victim's Reparations Act, and make determinations of any matter subject to such act.

**Source:** Laws 1978, LB 910, § 6; Laws 1981, LB 328, § 6; Laws 1986, LB 540, § 7; Laws 1991, LB 186, § 2.

**81-1807 Victim; compensation; application.**

Any person who may be eligible for compensation under the Nebraska Crime Victim's Reparations Act may make application to the committee on forms provided by the committee. If the person entitled to make application is a minor or mentally incompetent, the application may be made on his or her behalf by his or her parent, guardian, or any other individual authorized to administer his or her estate. Residents and nonresidents of Nebraska who are victims of crimes committed in Nebraska shall be treated similarly in determining compensation awards under the act. A resident of Nebraska who is the victim of a crime committed in another state shall be eligible for compensation if (1) the crime would be compensable had it occurred in Nebraska and (2) the crime occurred in a state which does not have a crime victim compensation program for which the person is eligible.

**Source:** Laws 1978, LB 910, § 7; Laws 1986, LB 540, § 8; Laws 1990, LB 87, § 4.

**81-1808 Victim; compensation; submit medical reports; hearing officer; order.**

In order to be eligible for compensation the applicant shall, prior to any hearing on an application, submit available reports from any physician or surgeon who has treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the hearing officer or the committee, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the hearing officer or the committee shall order the reports and examination.

**Source:** Laws 1978, LB 910, § 8; Laws 1986, LB 540, § 9.

**81-1809 Application; hearing officer; decision; hearing; procedure; review.**

(1) A hearing officer shall consider and rule upon any application made under the Nebraska Crime Victim's Reparations Act within one hundred eighty days after receipt of all required information related to the crime.

(2) If the hearing officer denies an award of compensation or awards an amount less than or equal to the amount requested by the applicant, the hearing officer shall furnish the applicant with a written statement of the reason for the ruling. The applicant may request a hearing on his or her application within thirty days after receipt of the statement. If the applicant requests a hearing, the hearing officer shall furnish the committee with his or her findings of fact and conclusions of law together with the reasons for the findings and conclusions. The committee shall specify a time and place for a hearing and shall give written notice to the applicant. The hearing shall be held within one hundred twenty days after receipt of the request for a hearing. If no

request for a hearing is made within the specified time, the decision of the hearing officer shall be final.

(3) If the hearing officer awards an amount to the applicant greater than the amount requested by the applicant, the hearing officer shall furnish the committee with his or her findings of fact and conclusions of law together with the reasons for granting the applicant more than he or she requested. The committee shall review the decision of the hearing officer taking into consideration the availability of funds appropriated for the purposes of the act and other standards formulated pursuant to section 81-1814. The committee may approve the same amount awarded by the hearing officer, may increase or decrease the amount, or may deny an award of compensation.

**Source:** Laws 1978, LB 910, § 9; Laws 1986, LB 540, § 10; Laws 1990, LB 87, § 5.

**81-1810 Committee or hearing officer; proceedings; powers; applicants; rights.**

(1) The committee or a hearing officer may hold hearings, sit and act at the times and places and take the testimony that the committee or the hearing officer considers advisable, and administer oaths or affirmations to witnesses. The hearing officer or the committee shall have full powers by subpoena to compel the appearance of witnesses and the production of any relevant evidence, but no subpoena shall be issued unless signed by a member of the committee. Application to a court for aid in enforcing the subpoena may be made in the name of the committee by any committee member.

(2) The applicant and any other person having a substantial interest in the proceeding may appear and be heard, produce evidence, and cross-examine witnesses in person or by an attorney. The committee or a hearing officer may hear other persons who in its or his or her judgment may have relevant evidence to submit.

(3) The committee or a hearing officer shall have access to criminal history record information, as defined in section 29-3506, and investigative information of the law enforcement agency which handled the offense which is the basis for the victim's application for compensation.

**Source:** Laws 1978, LB 910, § 10; Laws 1980, LB 319, § 1; Laws 1986, LB 540, § 11.

**81-1811 Offense; proof of conviction; how treated.**

If a person has been convicted of an offense on which a claim under the Nebraska Crime Victim's Reparations Act is based, proof of that conviction shall be taken as conclusive evidence that the offense occurred and that such person committed the offense, unless an appeal or a proceeding with regard to it is pending.

**Source:** Laws 1978, LB 910, § 11; Laws 1986, LB 540, § 12.

**81-1812 Hearing officer or committee; order; determine and allow attorney's fees.**

The hearing officer or the committee may, as part of an order entered under the Nebraska Crime Victim's Reparations Act, determine and allow reasonable attorney's fees not to exceed five percent of any compensation awarded. If the

decision of a hearing officer or the committee is appealed, the court shall determine reasonable attorney's fees.

**Source:** Laws 1978, LB 910, § 12; Laws 1986, LB 540, § 13.

**81-1813 Committee; adopt rules and regulations; forms and materials; provide.**

The committee may, subject to the approval of the commission, adopt and promulgate rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under the Nebraska Crime Victim's Reparations Act and any other matters the committee considers appropriate, including special circumstances, such as when expenses of job retraining or similar employment-related rehabilitative services are involved, under which an award under the act may exceed ten thousand dollars. The committee shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

**Source:** Laws 1978, LB 910, § 13; Laws 1981, LB 328, § 7; Laws 1986, LB 540, § 14.

**81-1814 Compensation; committee; formulate standards for uniform application.**

For the purpose of determining the amount of compensation payable under the Nebraska Crime Victim's Reparations Act, the committee shall formulate standards for uniform application of the act and take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States and the availability of funds appropriated for the purposes of the act. Victims of crimes subject to federal jurisdiction shall be awarded compensation on the same basis as victims of all other compensable crimes.

**Source:** Laws 1978, LB 910, § 14; Laws 1986, LB 540, § 15.

Discretion of board to eliminate an award to dependent children of victim regarding the availability of funds appropriated must be supported by record. Lambert v. Nebraska Cr. Vict. Rep. Bd., 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1815 Compensation; to whom paid.**

In a case in which a person is injured or killed as a result of conduct specified in the Nebraska Crime Victim's Reparations Act, or by any act of any other person which is within the description of offenses listed in such act, the committee or a hearing officer may order the payment of compensation:

- (1) To or for the benefit of the injured person;
- (2) In the case of personal injury or death of the victim, to a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury; or
- (3) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim.

**Source:** Laws 1978, LB 910, § 15; Laws 1986, LB 540, § 16.

Children who were supported by their mother were entitled to recover under Crime Victim's Reparations Act for pecuniary losses incurred due to crime, including financial support of their mother for the remainder of minority, up to the statutory limit. Lambert v. Nebraska Cr. Vict. Rep. Bd., 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1816 Committee or hearing officer; order; considerations; suspend proceedings; when.**

(1) In determining whether to make an order under the Nebraska Crime Victim's Reparations Act, the committee or hearing officer shall consider all circumstances determined to be relevant, including, but not limited to, provocation, consent, or any other behavior of the victim which directly or indirectly contributed to his or her injury or death.

(2) An order may be made under the Nebraska Crime Victim's Reparations Act whether or not any person is prosecuted for or convicted of an offense arising out of the act which caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the committee may suspend proceedings under the Nebraska Crime Victim's Reparations Act for such period as it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the application has been commenced or is imminent.

**Source:** Laws 1978, LB 910, § 16; Laws 1986, LB 540, § 17; Laws 1990, LB 87, § 6.

Social Security payment to aid dependent children who lost support of their mother not treated as form of collateral compensation when the board considers all relevant circumstances.

Lambert v. Nebraska Cr. Vict. Rep. Bd., 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1817 Compensation awarded; collateral compensation; how treated.**

(1) The committee or a hearing officer may award compensation for losses and expenses allowable under the Nebraska Crime Victim's Reparations Act for which the applicant is not compensated by the offender or a person on behalf of the offender, by the United States, by a state or any of its subdivisions or agencies, or by a private source of emergency awards under section 81-1820, for injury or death compensable under such act. Life insurance proceeds and social security payments shall not be treated as forms of such collateral compensation.

(2) If compensation is awarded under the act and the person receiving it also receives a collateral sum under the act which has not been deducted from it, he or she shall refund to the committee either the amount of the collateral sum or the amount of compensation paid to him or her under the act, whichever is less.

**Source:** Laws 1978, LB 910, § 17; Laws 1986, LB 540, § 18.

Social Security payment to aid dependent children who lost support of their mother not treated as form of collateral compensation when the board considers all relevant circumstances.

Lambert v. Nebraska Cr. Vict. Rep. Bd., 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1818 Personal injury or death; situations for which compensation is permitted.**

The committee or hearing officer may order the payment of compensation for personal injury or death which resulted from:

(1) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his or her duties, or to aid a victim of a crime; or

(2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

**Source:** Laws 1978, LB 910, § 18; Laws 1986, LB 540, § 19.

**81-1819 Payment of compensation; order; losses covered.**

The committee or hearing officer may order the payment of compensation to victims of crime and survivors of victims of crime for:

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including expenses for mental health counseling and care;
- (2) Loss of wages and future earning capacity as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Funeral and burial expenses actually and reasonably incurred as a result of the death of the victim; and
- (5) Any other loss resulting from the personal injury or death of the victim which the committee determines to be reasonable.

**Source:** Laws 1978, LB 910, § 19; Laws 1986, LB 540, § 20.

Children of murdered woman were not entitled to recover for loss of mother's love and affection under Crime Victim's Repara- tions Act. Lambert v. Nebraska Cr. Vict. Rep. Bd., 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1820 Hearing officer; emergency award of compensation; when; conditions; review.**

(1) Prior to the hearing officer taking action on an application, the applicant may request that a hearing officer make an emergency award of compensation to the applicant. If it appears to the hearing officer that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the hearing officer may make an emergency award of compensation to the applicant pending a final decision in the case, except that:

- (a) The amount of the emergency compensation shall not exceed five hundred dollars;
- (b) The amount of the emergency compensation shall be deducted from the final compensation made to the applicant; and
- (c) The excess amount of the emergency compensation over the final amount shall be repaid by the applicant to the committee.

(2) If the hearing officer refuses to make an emergency award of compensation to the applicant, the applicant may request an emergency hearing before the committee which may be conducted by means of teleconference. The committee shall forthwith specify a time and place for an emergency hearing and shall give written notice to the applicant. If it appears to the committee that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the committee may make an emergency award of compensation to the applicant pending a final decision in the case, subject to the conditions and limitations stated in subsection (1) of this section.

**Source:** Laws 1978, LB 910, § 20; Laws 1986, LB 540, § 21.

**81-1821 Application; statute of limitations.**

No order for the payment of compensation shall be entered under the Nebraska Crime Victim's Reparations Act unless the application has been submitted to the committee within two years after the date of the personal

injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

**Source:** Laws 1978, LB 910, § 21; Laws 1986, LB 540, § 22.

**81-1822 Compensation; situations when not awarded.**

No compensation shall be awarded:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

(2) If the offender will receive economic benefit or unjust enrichment from the compensation;

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) unless the operator is charged with a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any chemical test of the operator's breath or blood indicates an alcohol concentration equal to or in excess of the limits prescribed in section 60-6,196; or

(5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources. For purposes of this subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

(a) One year's earnings;

(b) The victim's equity in his or her home, not exceeding thirty thousand dollars;

(c) One motor vehicle; and

(d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss.

**Source:** Laws 1978, LB 910, § 22; Laws 1982, LB 942, § 7; Laws 1986, LB 540, § 23; Laws 1990, LB 87, § 7; Laws 1993, LB 370, § 489; Laws 2001, LB 773, § 18.

**81-1823 Award; limitations; how paid.**

Except as provided in section 81-1813, no compensation shall be awarded under the Nebraska Crime Victim's Reparations Act in an amount in excess of ten thousand dollars for each applicant per incident unless expenses for job retraining or similar employment-related rehabilitative services for the victim are deemed necessary. In such case, amounts in excess of ten thousand dollars shall be used only for such purposes. Each award shall be paid in installments unless the hearing officer or committee decides otherwise.

**Source:** Laws 1978, LB 910, § 23; Laws 1986, LB 540, § 24.

Children who have lost the financial support of their mother for at least the remainder of their minority are limited to single award of \$10,000 each by act, even though lost support would total more than \$10,000. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1824 Excluded incidents.**

No order for payment of compensation under the Nebraska Crime Victim's Reparations Act shall be made for injuries or death resulting from incidents or offenses occurring prior to January 1, 1979, or outside the state.

**Source:** Laws 1978, LB 910, § 24; Laws 1986, LB 540, § 25.

**81-1825 Committee; subrogation rights.**

When an order for the payment of compensation for personal injury or death is made, the committee shall be subrogated to the cause of action of the applicant against the person responsible for the injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the committee shall pay the balance to the applicant.

**Source:** Laws 1978, LB 910, § 25; Laws 1986, LB 540, § 26.

**81-1826 Department of Correctional Services; confined persons; provide for employment.**

The Department of Correctional Services shall, as far as possible, provide for the employment, eight hours per day, of confined persons by private businesses. The employment may be provided under section 81-1827, 83-183, or 83-184.

**Source:** Laws 1978, LB 910, § 26; Laws 1980, LB 319, § 3; Laws 1994, LB 988, § 29.

**81-1827 Business enterprise; employment of persons committed to the department.**

(1) The Director of Correctional Services may enter into such contracts as may be necessary to fully implement the Nebraska Crime Victim's Reparations Act. Such contractual arrangements may include, but not be limited to, rental or lease agreements for such buildings or portions thereof on the grounds of any Department of Correctional Services facilities, together with the real estate needed for reasonable access to and egress from the leased buildings, with a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of goods, wares, or merchandise or any other business or commercial enterprise deemed by the director to be consistent with the proper training and rehabilitation of persons committed to the department.

(2) Nothing in this section shall operate to limit the director's authority to enter into contractual arrangements as may be provided elsewhere in law.

(3) Any corporation operating a factory or other business or commercial enterprise under this section may employ offenders committed to the Department of Correctional Services and persons conditionally released subject to the provisions of section 83-184.

**Source:** Laws 1978, LB 910, § 27; Laws 1980, LB 319, § 4; Laws 1986, LB 540, § 27.

**81-1828 Repealed. Laws 1980, LB 319, § 12.****81-1829 Department of Correctional Services; establish and maintain farms.**

The Department of Correctional Services may establish and maintain farms to provide food for the institutions under the jurisdiction of the department and also to provide opportunity for all inmates to work eight hours per day.

**Source:** Laws 1978, LB 910, § 29; Laws 1980, LB 319, § 5.

**81-1830 False claim; penalty.**

Any person who knowingly makes a false claim under the Nebraska Crime Victim's Reparations Act shall be guilty of a Class I misdemeanor and shall forfeit any benefit received and shall repay the state for any payment of compensation made under the act.

**Source:** Laws 1978, LB 910, § 30; Laws 1986, LB 540, § 28.

**81-1831 Right of action; abate; exception.**

The rights to compensation created under the Nebraska Crime Victim's Reparations Act are personal and shall not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the committee the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

**Source:** Laws 1978, LB 910, § 31; Laws 1986, LB 540, § 29.

**81-1832 Appeal; procedure.**

All determinations, decisions, and awards made by the committee or any hearing officer may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1978, LB 910, § 32; Laws 1986, LB 540, § 30; Laws 1988, LB 352, § 180.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

This section covers appeal to district court by the children of a crime victim from a denial of their application to the Nebraska Crime Victim's Reparations Board. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).

**81-1833 Committee; report; contents.**

The committee shall prepare and submit to the commission a biennial report of its activities under the Nebraska Crime Victim's Reparations Act, including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded, except that if the applicant was the victim of a sexual assault the victim's name shall not be included in the report, but shall be available to the Governor or a member of the Legislature upon request to the committee. Such report shall be submitted to the Governor and Clerk of the Legislature as part of the commission's report submitted pursuant to section 81-1423.

**Source:** Laws 1978, LB 910, § 33; Laws 1979, LB 322, § 60; Laws 1980, LB 319, § 6; Laws 1981, LB 545, § 37; Laws 1981, LB 328, § 8; Laws 1986, LB 540, § 31.

**81-1834 Award; payment.**

Any award to a claimant and any judgment in favor of a claimant under the Nebraska Crime Victim's Reparations Act shall be certified by the committee to the Director of Administrative Services who shall promptly issue a warrant for payment of such award of judgment out of the Victim's Compensation Fund if sufficient money is available in such fund.

**Source:** Laws 1978, LB 910, § 34; Laws 1986, LB 540, § 32.

**81-1835 Victim's Compensation Fund; established; purpose; investment.**

There is hereby established in the state treasury a Victim's Compensation Fund from which all awards or judgments under the Nebraska Crime Victim's Reparations Act shall be paid. This fund shall include deposits pursuant to sections 29-2286, 81-1836, and 83-183.01 and shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the fund is not sufficient to pay any awards or judgments under the act, the Director of Administrative Services shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the 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.

**Source:** Laws 1978, LB 910, § 35; Laws 1986, LB 540, § 33; Laws 1987, LB 353, § 2; Laws 1995, LB 7, § 132.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-1836 Person convicted of crime; payments received; deposited in fund.**

Every person, firm, corporation, partnership, limited liability company, association, or other legal entity contracting with any person or the representative or assignee of any person accused of a crime in this state with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio, or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the committee any money which would otherwise, by terms of such contract, be owing to the person so convicted or his or her representatives. The committee shall deposit such money in the Victim's Compensation Fund.

**Source:** Laws 1978, LB 910, § 36; Laws 1986, LB 540, § 34; Laws 1993, LB 121, § 544.

**81-1837 Money in Victim's Compensation Fund; returned; when.**

Upon disposition of charges favorable to any person accused of committing a crime or upon a showing by such person that five years have elapsed from the deposit of money into the Victim's Compensation Fund by the accused pursuant to section 81-1836 and further that no actions are pending against such person pursuant to the Nebraska Crime Victim's Reparations Act, the committee shall

immediately pay the money deposited pursuant to such section by the accused to such person.

**Source:** Laws 1978, LB 910, § 37; Laws 1986, LB 540, § 35; Laws 1990, LB 87, § 8.

**81-1838 Five-year period; when commenced.**

Notwithstanding any other provision of law with respect to the timely bringing of an action, the five-year period provided for in section 81-1837 shall not begin to run until the accused has deposited money into the Victim's Compensation Fund.

**Source:** Laws 1978, LB 910, § 38.

**81-1839 Committee; payments from fund for legal representation; when.**

Notwithstanding the provisions of sections 81-1836 to 81-1838, the committee shall make payments from the fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

**Source:** Laws 1978, LB 910, § 39; Laws 1986, LB 540, § 36.

**81-1840 Action to defeat purpose of act; null and void.**

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

**Source:** Laws 1978, LB 910, § 40.

**81-1840.01 State or political subdivision; failure to act; effect.**

Nothing in the Nebraska Crime Victim's Reparations Act or sections 81-1843 to 81-1851 requiring an act by the state or a political subdivision is deemed to create any liability if the state or political subdivision fails to act as required under the Nebraska Crime Victim's Reparations Act or such sections. Such failure to act also shall not invalidate any legal process or proceeding.

**Source:** Laws 2004, LB 270, § 7.

**81-1841 Act, how cited.**

Sections 81-1801 to 81-1842 shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

**Source:** Laws 1978, LB 910, § 41; Laws 2004, LB 270, § 6.

**81-1842 Sexual assault victim; records; confidential.**

The name of any victim of a sexual assault appearing in information or records of the Crime Victim's Reparations Committee when the victim is applying for compensation under the Nebraska Crime Victim's Reparations Act shall not be made public.

**Source:** Laws 1980, LB 319, § 2; Laws 1986, LB 540, § 37.

## (b) CRIME VICTIMS AND WITNESSES ASSISTANCE

**81-1843 Legislative findings.**

(1) The Legislature finds and declares:

(a) That there is a need to develop methods to reduce the trauma and discomfort that victims of a crime and witnesses to a crime may experience because often such victims or witnesses are further victimized by the criminal justice system;

(b) That when crime strikes, the chief concern of the criminal justice system is apprehending and dealing with the criminal and the victim's needs are frequently forgotten;

(c) That victims often become isolated and receive little practical advice or necessary care;

(d) That witnesses must make arrangements to appear in court regardless of their own schedules, child care responsibilities, or transportation problems;

(e) That witnesses often endure long waits before testifying, are subjected to confusing circumstances while testifying, and receive no information as to the ultimate disposition of the case;

(f) That a large number of victims and witnesses are unaware of both their rights and obligations;

(g) That unreported crimes occur at a rate that is more than twice the rate of reported crimes and that the reasons people give for not reporting crimes indicate that they are disenchanting with the criminal justice system;

(h) That the single most important factor determining whether or not a case will be solved is the information that the victim supplies to the responding police officer; and

(i) That although the State of Nebraska has the Crime Victim's Reparations Committee and compensation is available for medical expenses, lost earning power, and reasonable rehabilitation costs, the application process is difficult, complex, and time consuming and few victims are aware that the compensation provisions exist.

(2) It is therefore the intent of the Legislature to provide ways of improving the attitudes of victims and witnesses toward the criminal justice system and to provide for faster and more complete recovery by the victim from the effects of the crime through the establishment of pilot project centers for victim and witness assistance.

**Source:** Laws 1981, LB 477, § 1; Laws 1986, LB 540, § 38.

**81-1844 Crime Victim and Witness Assistance Fund; created; administration; use.**

There is hereby created a fund to be known as the Crime Victim and Witness Assistance Fund. Such fund shall contain such amounts as may be appropriated by the Legislature and shall be used only for the purposes set forth in sections 81-1843 to 81-1851. Such fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice.

**Source:** Laws 1981, LB 477, § 2; Laws 2004, LB 270, § 8.

**81-1844.01 Pamphlet on rights and procedures; distribution.**

(1) The Nebraska Commission on Law Enforcement and Criminal Justice shall create a pamphlet or document that contains the following information:

- (a) A brief statement of the procedural steps of a criminal case;
- (b) The rights and procedures under sections 81-1843 to 81-1851;
- (c) Suggested procedures if the victim or the victim's immediate family is subjected to acts or threats of physical violence or intimidation by the defendant or at the direction of the defendant; and
- (d) The availability of victim's compensation awards and the address of the Crime Victim's Reparations Committee.

(2) Not later than seventy-two hours after arraignment of the defendant for the crime, the county attorney shall distribute to the victim, as defined in section 29-119, the pamphlet or document of victim's rights created by the commission pursuant to this section.

**Source:** Laws 2004, LB 270, § 9.

**81-1845 Victim and witness assistance center; selection and establishment; Nebraska Commission on Law Enforcement and Criminal Justice; duties; funding.**

(1) Any public or private nonprofit agency may apply to the Nebraska Commission on Law Enforcement and Criminal Justice for selection and funding as a victim and witness assistance center pursuant to sections 81-1843 to 81-1851.

(2) The commission shall consider the following factors, together with any other factors it deems appropriate, in selecting applicants to receive funds and be designated as a victim and witness assistance center:

- (a) The number of volunteers that the proposed center will utilize;
- (b) The stated goals of the applicant;
- (c) The potential number of people that may be served by the proposed center and the needs of the community for such a center;
- (d) Evidence of community support for the establishment of the proposed center; and
- (e) The organizational structure of the agency which will operate the proposed center and provide services to victims and witnesses of crimes.

(3) Upon evaluation of all applicants, the Nebraska Commission on Law Enforcement and Criminal Justice shall select a number of public or private nonprofit agencies which the commission deems qualified for designation to receive funding for the establishment and operation of such centers.

(4) The commission shall, upon the establishment of such centers, conduct appraisals of their performance to determine which of the centers shall receive continuation grants. The commission shall report its finding to the Governor and the Clerk of the Legislature.

**Source:** Laws 1981, LB 477, § 3; Laws 2004, LB 270, § 10.

**81-1846 Victim and witness assistance centers; purposes.**

The centers shall be designed to:

- (1) Assist criminal justice agencies in giving more consideration and personal attention to victims and witnesses through the delivery of services to victims and witnesses of crimes;
- (2) Provide a model for other community-based efforts to aid victims and witnesses;
- (3) Sensitize law enforcement officials, communications technicians, and supervisors to the needs of victims of crime and encourage a concerned approach to such victims;
- (4) Attempt to decrease the incidence of unreported crimes; and
- (5) Assure that victims and witnesses are informed of the progress of the case in which they are involved.

**Source:** Laws 1981, LB 477, § 4.

**81-1847 Victim and witness assistance centers; services provided.**

Services provided by the centers shall include, but not be limited to:

- (1) Providing assistance to victims in preparing claims for submission to the Crime Victim's Reparations Committee;
- (2) Establishing a means for volunteers to work with criminal justice agencies to promote greater sensitivity to the needs of victims and witnesses;
- (3) Providing followup support services to victims of violent crime and their families to insure that they receive necessary assistance through available community resources;
- (4) Providing elderly victims of crime with services appropriate to their special needs;
- (5) Providing liaison and referral systems to special counseling facilities and community service agencies for victims;
- (6) Providing transportation and household assistance to those victims and witnesses participating in the criminal justice process;
- (7) Notifying friends, relatives, and the employer of a victim, if requested;
- (8) Arranging for verification of medical benefits and assistance when applying for compensation from the Crime Victim's Reparations Committee;
- (9) Notifying witnesses prior to their being subpoenaed in criminal cases; and
- (10) Notifying witnesses of changes in the court calendar to avoid unnecessary trips to the court or spending unnecessary time in court.

**Source:** Laws 1981, LB 477, § 5; Laws 1986, LB 540, § 39.

**81-1848 Victims and witnesses of crimes; rights; enumerated.**

- (1) Victims as defined in section 29-119 shall have the following rights:
  - (a) To examine information which is a matter of public record and collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges. Such information shall include any disposition arising from such arrests, charges, sentencing, correctional supervision, and release, but shall not include intelligence or investigative information;

(b) To receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule;

(c) To be present throughout the entire trial of the defendant, unless the victim is to be called as a witness or the court finds sequestration of the victim necessary for a fair trial. If the victim is to be called as a witness, the court may order the victim to be sequestered;

(d) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the following:

(i) The crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;

(ii) The final disposition of the case;

(iii) The crimes for which the defendant was convicted;

(iv) The victim's right to make a written or oral impact statement to be used in the probation officer's preparation of a presentence investigation report concerning the defendant;

(v) The address and telephone number of the probation office which is to prepare the presentence investigation report;

(vi) That a presentence investigation report and any statement by the victim included in such report will be made available to the defendant unless exempted from disclosure by order of the court; and

(vii) The victim's right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement submitted pursuant to subdivision (1)(d)(iv) of this section at the sentencing proceeding;

(e) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of any subsequent judicial proceedings if the defendant was acquitted on grounds of insanity;

(f) To be notified as provided in section 81-1850, to testify before the Board of Parole or submit a written statement for consideration by the board, and to be notified of the decision of and any action taken by the board; and

(g) To submit a written statement for consideration at any conditional release proceedings, Board of Parole proceedings, pardon proceedings, or commutation proceedings. Conditional release proceeding means a proceeding convened pursuant to a Department of Correctional Services' decision to grant a furlough from incarceration for twenty-four hours or longer or a release into community-based programs, including educational release and work release.

(2) Victims and witnesses of crimes shall have the following rights:

(a) To be informed on all writs of subpoena or notices to appear that they are entitled to apply for and may receive a witness fee;

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled in order to save the person an unnecessary trip to court;

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts and to be provided with information as to the level of protection available;

(d) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

(f) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

(g) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days after being taken;

(h) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

(i) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter;

(j) To be informed by the county attorney of the final disposition of a felony case in which they were involved and to be notified pursuant to section 81-1850 whenever the defendant in such case is released from custody; and

(k) To have the family members of all homicide victims afforded all of the rights under subsection (2) of this section and services analogous to those provided under section 81-1847.

**Source:** Laws 1981, LB 477, § 6; Laws 1990, LB 87, § 9; Laws 1991, LB 186, § 3; Laws 2004, LB 270, § 11.

**81-1848.01 Appeal; notification required.**

(1) Upon the filing of an appeal by the defendant, the county attorney upon whom notice of appeal was served shall notify the Attorney General in writing of the name and last-known address of any victim as defined in section 29-119.

(2) The Attorney General shall notify the victim of the following:

(a) That the defendant has filed an appeal of the conviction;

(b) A brief explanation of the appeal process, including possible dispositions;

(c) Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;

(d) The time and place of any appellate proceedings and any changes in the time or place of those proceedings;

(e) The result of the appeal; and

(f) The final disposition of the case within thirty days after the final disposition.

(3) In the event the defendant's conviction is reversed and the case is remanded to the trial court for further proceedings, the victim has the same rights as he or she had during the previous proceedings which led to the appeal.

**Source:** Laws 2004, LB 270, § 12.

**81-1848.02 Escape; notification required.**

(1) As provided in subsections (2) and (3) of this section, the victim, as defined in section 29-119, and the prosecuting attorney shall be immediately notified of an escape by a prisoner confined and accused of, convicted of, or sentenced for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice to the victim and the prosecuting attorney.

(2) If the escape occurs before the sentence is executed or before the prisoner is delivered to the custody of the Department of Correctional Services or the county corrections agency, the chief law enforcement officer of the agency in charge of the prisoner's detention shall notify the victim and the prosecuting attorney of the escape.

(3) If the prisoner is confined pursuant to a sentence, the chief administrator of the facility where the prisoner was confined shall notify the victim and the prosecuting attorney.

**Source:** Laws 2004, LB 270, § 13.

#### **81-1848.03 Victim's rights; waiver.**

Victim's rights under sections 81-1843 to 81-1851 may be waived by the victim at any time by (1) written consent, in person or by attorney, filed with the clerk of the court or (2) oral consent in open court entered on the journal.

**Source:** Laws 2004, LB 270, § 14.

#### **81-1849 Victim; duty.**

To receive the notices provided for in sections 81-1848 to 81-1848.02, a victim shall keep the county attorney informed of his or her current address and telephone number.

**Source:** Laws 1990, LB 87, § 10; Laws 2002, LB 1105, § 510; Laws 2004, LB 270, § 15.

#### **81-1850 County attorney; Board of Parole; Department of Correctional Services; county corrections agency; Department of Health and Human Services; duties; notification of victim.**

(1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services the name and address of any victim, as defined in section 29-119, of the convicted person. The board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section, as applicable, by sending a written request to the board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services or, if the person is under the jurisdiction of the Department of Health and Human

Services, within the three-year period after the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services.

(2) A victim whose name appears in the file of the convicted person shall be notified by the Board of Parole:

(a) Within ninety days after conviction of an offender, of the tentative date of release and the earliest parole eligibility date of such offender;

(b) Of any parole hearings or proceedings;

(c) Of any decision of the Board of Parole;

(d) When a convicted person who is on parole is returned to custody because of parole violations; and

(e) If the convicted person has been adjudged a mentally disordered sex offender or is a convicted sex offender, when such person is released from custody or treatment.

Such notification shall be given in person, by telecommunication, or by mail.

(3) A victim whose name appears in the file of the convicted person shall be notified by the Department of Correctional Services or a county corrections agency:

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer or any transfer of the convicted person to community status;

(b) When a convicted person is released into community-based programs, including educational release and work release programs. Such notification shall occur at the beginning and termination of any such program;

(c) When a convicted person escapes or does not return from a granted furlough or release and again when the convicted person is returned into custody;

(d) When a convicted person is discharged from custody upon completion of his or her sentence. Such notice shall be given at least thirty days before discharge, when practicable;

(e) Of the (i) department's calculation of the earliest parole eligibility date of the prisoner with all potential good time or disciplinary credits considered if the sentence exceeds ninety days or (ii) county corrections agency's calculation of the earliest release date of the prisoner. The victim may request one notice of the calculation described in this subdivision. Such information shall be mailed not later than thirty days after receipt of the request;

(f) Of any reduction in the prisoner's minimum sentence; and

(g) Of the victim's right to submit a statement as provided in section 81-1848.

(4) A victim whose name appears in the file of a convicted person shall be notified by the Department of Health and Human Services:

(a) When a person convicted of an offense listed in subsection (5) of this section becomes the subject of a petition pursuant to the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act prior to his or her discharge from custody upon the completion of his or her sentence or within thirty days after such discharge. The county attorney who filed the petition shall notify the Department of Correctional Services of such petition. The Department of Correctional Services shall forward the names and address-

es of victims appearing in the file of the convicted person to the Department of Health and Human Services;

(b) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection escapes from an inpatient facility providing board-ordered treatment and again when the person is returned to an inpatient facility;

(c) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is discharged or has a change in disposition from inpatient board-ordered treatment;

(d) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is granted a furlough or release for twenty-four hours or longer; and

(e) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is released into educational release programs or work release programs. Such notification shall occur at the beginning and termination of any such program.

(5) Subsection (4) of this section applies to persons convicted of at least one of the following offenses which is also alleged to be the recent act or threat underlying the commitment of such persons as mentally ill and dangerous or as dangerous sex offenders as defined in section 83-174.01:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Kidnapping pursuant to section 28-313;

(d) Assault in the first degree pursuant to section 28-308;

(e) Assault in the second degree pursuant to section 28-309;

(f) Sexual assault in the first degree pursuant to section 28-319;

(g) Sexual assault in the second degree pursuant to section 28-320;

(h) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(i) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(j) Stalking pursuant to section 28-311.03; or

(k) An attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (a) through (j) of this subsection.

(6) A victim whose name appears in the file of a convicted person shall be notified by the Board of Pardons:

(a) Of any pardon or commutation proceedings; and

(b) If a pardon or commutation has been granted.

(7) The Board of Parole, the Department of Correctional Services, the Department of Health and Human Services, and the Board of Pardons shall adopt and promulgate rules and regulations as needed to carry out this section.

(8) The victim's address and telephone number maintained by the Department of Correctional Services, the Department of Health and Human Services, the county corrections agency, or the Board of Parole pursuant to subsection (1) of this section shall be exempt from disclosure under public records laws

and federal freedom of information laws, as such laws existed on January 1, 2004.

**Source:** Laws 1991, LB 186, § 4; Laws 1992, LB 523, § 16; Laws 1997, LB 325, § 1; Laws 2004, LB 270, § 16; Laws 2004, LB 1083, § 127; Laws 2006, LB 1199, § 85.

Cross References

**Nebraska Mental Health Commitment Act**, see section 71-901.  
**Sex Offender Commitment Act**, see section 71-1201.

**81-1851 Legislative intent.**

It is the intent of the Legislature that sections 81-1843 to 81-1851 shall be construed as enabling the rights set forth in Article I, section 28, of the Constitution of Nebraska.

**Source:** Laws 2004, LB 270, § 17.

**ARTICLE 19**

**TRUTH AND DECEPTION EXAMINERS**

Section	
81-1901.	Act, how cited.
81-1902.	Sections; purpose; how construed.
81-1903.	Definitions, where found.
81-1904.	Secretary, defined.
81-1905.	Examinee, defined.
81-1906.	Person, defined.
81-1907.	Polygraph, defined.
81-1908.	Polygraph examiner, defined.
81-1909.	Voice stress analyzer, defined.
81-1910.	Voice analysis examiner, defined.
81-1911.	Examiner, defined.
81-1912.	Private examiner, defined.
81-1913.	Public examiner, defined.
81-1914.	Truthfulness or deception; detection; license required.
81-1915.	License; application.
81-1916.	Polygraph; license to operate; applicant; qualifications; affidavit; contents.
81-1917.	Voice stress analysis; license to operate; applicant; qualifications; affidavit; contents.
81-1918.	Course of study or training; certified facility; proof of completion.
81-1919.	Intern's license; qualifications.
81-1920.	Application; investigated by Secretary of State.
81-1921.	Examiner's licenses; fees; expiration.
81-1922.	Intern licenses; fees; expiration.
81-1923.	License; not assignable or transferable.
81-1924.	License; fee; duplicate license; place of business; displayed.
81-1925.	Licenses; revenue placed in General Fund.
81-1926.	Public examiner; fee; private examination; second license required; violation; penalty.
81-1927.	Licensee; change of address; notify Secretary of State.
81-1928.	License; denied, suspended, revoked; grounds; hearing.
81-1929.	License; revoked, suspended; surrendered; when.
81-1930.	Licensee; service of process.
81-1931.	Appeal; procedure.
81-1932.	Employee; use of truth and deception examination; when; limitation.
81-1933.	Employer; violation; penalty.
81-1934.	Secretary of State; rules and regulations; adopt; forms.
81-1935.	Act; violation; penalty.
81-1936.	Examiner's license; reciprocity; requirements.

**81-1901 Act, how cited.**

Sections 81-1901 to 81-1936 shall be known and may be cited as the Licensing of Truth and Deception Examiners Act.

**Source:** Laws 1980, LB 485, § 1.

**81-1902 Sections; purpose; how construed.**

It is the purpose of sections 81-1901 to 81-1936 to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation, such as lie detectors, polygraphs, deceptographs, psychological stress evaluators, or voice analyzers. Sections 81-1901 to 81-1936 shall be liberally construed to regulate all such persons using such instruments. No person who purports to be able to detect deception or to verify the truth of statements through instrumentation shall be exempt from sections 81-1901 to 81-1936 because of the terminology which he or she may use to refer to himself or herself, to an instrument used, or to services provided. Sections 81-1901 to 81-1936 shall not be interpreted to prohibit the legitimate use of any of the instruments listed in this section for research purposes.

**Source:** Laws 1980, LB 485, § 2.

**81-1903 Definitions, where found.**

For the purpose of sections 81-1901 to 81-1936, unless the context otherwise requires, the definitions found in sections 81-1904 to 81-1913 shall be used.

**Source:** Laws 1980, LB 485, § 3.

**81-1904 Secretary, defined.**

Secretary shall mean the Secretary of State for the State of Nebraska.

**Source:** Laws 1980, LB 485, § 4.

**81-1905 Examinee, defined.**

Examinee shall mean the individual who is being examined, tested, or questioned by an examiner or intern for the purpose of verifying truthfulness or detecting deception.

**Source:** Laws 1980, LB 485, § 5.

**81-1906 Person, defined.**

Person shall mean any individual, firm, partnership, limited liability company, association, or corporation.

**Source:** Laws 1980, LB 485, § 6; Laws 1993, LB 121, § 545.

**81-1907 Polygraph, defined.**

Polygraph shall mean any mechanical or electronic instrument which uses attached sensors to record psychophysiological responses for the purpose of attempting to determine truth or deception and which records permanently and simultaneously at least three physiological responses. The physiological re-

sponses recorded shall include, but not be limited to, respiratory pattern, cardiovascular pattern, and galvanic skin response.

**Source:** Laws 1980, LB 485, § 7.

**81-1908 Polygraph examiner, defined.**

Polygraph examiner shall mean any person, other than an intern, who uses an approved polygraph to test or question an examinee for the purpose of attempting to determine truth or deception.

**Source:** Laws 1980, LB 485, § 8.

**81-1909 Voice stress analyzer, defined.**

A voice stress analyzer shall mean a mechanical or electronic instrument capable of recording the human voice, which detects and measures pitch, amplitude, frequency, and other components of the human voice for the purpose of attempting to determine truth or deception, and whose records are permanently and simultaneously recorded.

**Source:** Laws 1980, LB 485, § 9.

**81-1910 Voice analysis examiner, defined.**

Voice analysis examiner shall mean any person, other than an intern, who uses an instrument capable of permanently recording on a graph one or more psychophysiological reactions present in the voice of an examinee for the purpose of attempting to determine truth or deception.

**Source:** Laws 1980, LB 485, § 10.

**81-1911 Examiner, defined.**

Examiner shall mean any polygraph examiner, voice analysis examiner, or any other person, other than an intern, who does any of the following:

(1) Purports to verify truthfulness or to detect deception or to provide a diagnostic opinion regarding such truthfulness or deception through instrumentation or the use of a mechanical device;

(2) Represents that he or she can or does offer the service of attempting to verify truthfulness or detect deception or providing a diagnostic opinion regarding such truthfulness or deception through instrumentation or the use of a mechanical device; or

(3) Uses instrumentation or a mechanical device to measure or record an individual's body responses or psychophysiological activities to enable or assist in the attempted verification of truthfulness or detection of deception or the providing of a diagnostic opinion regarding such truthfulness or deception.

**Source:** Laws 1980, LB 485, § 11.

**81-1912 Private examiner, defined.**

Private examiner shall mean any examiner who performs or purports to perform the service of attempting to verify truthfulness or detect deception or providing a diagnostic opinion regarding such truthfulness or deception under any circumstances other than as a public examiner.

**Source:** Laws 1980, LB 485, § 12.

**81-1913 Public examiner, defined.**

Public examiner shall mean an examiner who performs or purports to perform the service of attempting to verify truthfulness or detect deception or providing a diagnostic opinion regarding such truthfulness or deception exclusively in his or her official capacity as a salaried employee of some agency or political subdivision of the state.

**Source:** Laws 1980, LB 485, § 13.

**81-1914 Truthfulness or deception; detection; license required.**

No person shall, after January 1, 1981, by any means, use or attempt to use any instrument or device for the purpose of attempting to verify truthfulness or detect deception, or reporting or assisting in the reporting of a diagnostic opinion regarding such truthfulness or deception unless such person is duly licensed and holds a valid license under sections 81-1901 to 81-1936. No person shall falsely represent that he or she is employed by or represents a person licensed under sections 81-1901 to 81-1936.

**Source:** Laws 1980, LB 485, § 14.

**81-1915 License; application.**

A person, including a municipal, county, or state employee, who wishes to engage in the use of instrumentation which is designed to attempt to detect truth or deception and any other person desiring to be licensed under sections 81-1901 to 81-1936 shall file an application for a license with the Secretary of State. If the applicant is an individual, the application shall include the applicant's social security number. The Secretary of State shall issue a non-transferable license to each qualified applicant. Such license shall authorize the holder to engage in the use of instrumentation designed to detect truth or deception and each license shall specify the instrument the holder is licensed to operate.

**Source:** Laws 1980, LB 485, § 15; Laws 1997, LB 752, § 227.

**81-1916 Polygraph; license to operate; applicant; qualifications; affidavit; contents.**

(1) Each applicant for a truth and deception examiner's license to operate a polygraph instrument shall submit to the Secretary of State a sworn affidavit that the applicant:

- (a) Is at least nineteen years of age;
- (b) Is a citizen of the United States and a resident of the State of Nebraska;
- (c) Has not been under sentence for the commission of a felony within five years prior to such application, including parole, probation, or actual incarceration, and has never been convicted of a felony or a misdemeanor involving moral turpitude;
- (d) Has an academic degree at the baccalaureate level from an accredited college or university, has at least four years of investigative experience at the federal, state, political subdivision, or private licensed investigator level immediately prior to application, or has had at least four years experience administering polygraph examinations;

(e) Has satisfactorily completed a minimum of two hundred fifty classroom hours of formal polygraph instructions from an institution recognized and approved by the secretary and satisfactorily completed not less than one year of internship training or its equivalent as approved by the secretary; and

(f) Has not previously had an examiner's license or its equivalent refused, revoked, or suspended, or otherwise invalidated for any cause which would also represent lawful grounds for revoking or denying the applicant's license under sections 81-1901 to 81-1936.

(2) Each applicant shall also:

(a) Furnish the secretary with satisfactory proof that he or she has had suitable experience in the personal administration of polygraph examinations during his or her internship or its equivalent;

(b) Furnish the secretary with completed fingerprint cards, in duplicate, bearing the applicant's fingerprints and such other identifying information or certification as to the authenticity thereof as the secretary may reasonably require; and

(c) After satisfying all of the other requirements of this section, be required to satisfactorily pass a written examination regarding the polygraph, conducted by the secretary or under his or her supervision, given to determine competency to practice as an examiner.

**Source:** Laws 1980, LB 485, § 16.

**81-1917 Voice stress analysis; license to operate; applicant; qualifications; affidavit; contents.**

(1) Each applicant for a truth and deception examiner's license to operate a voice stress analysis instrument shall submit to the Secretary of State a sworn affidavit that the applicant:

(a) Is at least nineteen years of age;

(b) Is a citizen of the United States and a resident of the State of Nebraska;

(c) Has not been under sentence for the commission of a felony within five years prior to application, including parole, probation, or actual incarceration, and has never been convicted of a felony or a misdemeanor involving moral turpitude;

(d) Has an academic degree at the baccalaureate level from an accredited college or university, has at least four years of investigative experience at the federal, state, political subdivision, or private licensed investigator level immediately prior to application, or has had at least four years experience administering voice stress examinations;

(e) Has satisfactorily completed a minimum of one hundred fifty classroom hours of formal voice stress analysis instruction recognized and approved by the secretary and has satisfactorily completed at least one year of internship training or its equivalent as approved by the secretary; and

(f) Has not previously had an examiner's license or its equivalent refused or revoked, or otherwise invalidated for cause duly shown which would also represent lawful grounds for revoking or denying the applicant's license under sections 81-1901 to 81-1936.

(2) Each applicant shall also:

(a) Provide the secretary with proof that the applicant has completed a course of study at a training facility approved pursuant to subdivision (e) of subsection (1) of this section;

(b) Furnish the secretary with satisfactory proof that he or she has had suitable experience in the personal administration of voice stress analysis examinations during his or her training course;

(c) Furnish the secretary with completed fingerprint cards, in duplicate, bearing the applicant's fingerprints and such other identifying information or certification as to the authenticity thereof as the secretary may reasonably require; and

(d) After satisfying all of the other requirements of this section, be required to satisfactorily pass a written examination regarding the voice stress analysis instruments, conducted by the secretary or under his or her supervision, given to determine competency to practice as an examiner.

**Source:** Laws 1980, LB 485, § 17.

**81-1918 Course of study or training; certified facility; proof of completion.**

For purposes of sections 81-1916 and 81-1917 the secretary shall accept as proof of completion of a course of study or training a copy of a diploma or certificate attesting to the applicant's completion of a training course at an approved or certified training facility or institution including, but not limited to, those training facilities or institutions which have been certified by (1) the American Polygraph Association as a course of study and training in the use of the polygraph instrument, and (2) the International Society of Stress Analysts as a course of study and training in the use of voice stress instruments.

**Source:** Laws 1980, LB 485, § 18.

**81-1919 Intern's license; qualifications.**

A person may apply for and receive an intern's license authorizing such person to use a polygraph or voice analysis instrument if such person is in compliance with subdivisions (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), and (2)(b) of section 81-1916 or subdivisions (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), and (2)(c) of section 81-1917 respectively. A person shall apply for an intern's license ten days prior to the commencement of his or her internship.

**Source:** Laws 1980, LB 485, § 19.

**81-1920 Application; investigated by Secretary of State.**

The secretary shall investigate or cause to be investigated each application for an examiner or intern's license in order to determine that all information and statements in the application are correct. If the applicant is an individual, the application shall include the applicant's social security number. The secretary shall not issue the license until the investigation is complete. The investigation shall be completed within ninety days after receipt of the application.

**Source:** Laws 1980, LB 485, § 20; Laws 1997, LB 752, § 228.

**81-1921 Examiner's licenses; fees; expiration.**

The fee for all initial examiner's licenses shall be fifty dollars. The license shall expire on December 31 following its issuance. An examiner's license may

be renewed from year to year upon payment of a fee of twenty-five dollars. Additional provisions for licenses may be provided for by rules and regulations adopted and promulgated by the secretary.

**Source:** Laws 1980, LB 485, § 21; Laws 1982, LB 928, § 73.

**81-1922 Intern licenses; fees; expiration.**

The fee for all intern licenses shall be fifteen dollars. The license shall expire twelve months following its issuance. The secretary may renew or extend an intern's license upon a showing of good cause for any period not to exceed six months for a fee of fifteen dollars.

**Source:** Laws 1980, LB 485, § 22; Laws 1982, LB 928, § 74.

**81-1923 License; not assignable or transferable.**

A license issued pursuant to sections 81-1901 to 81-1936 shall not be assignable or transferable.

**Source:** Laws 1980, LB 485, § 23.

**81-1924 License; fee; duplicate license; place of business; displayed.**

A license issued under sections 81-1901 to 81-1936 is the property of the state and shall be loaned to the licensee. A license or duplicate license shall be prominently displayed at each place of business of every examiner and the address of the licensee's place of business shall appear on the face of the license. The fee for a duplicate license is ten dollars.

If a licensee maintains more than one place of business, the licensee shall obtain a duplicate license from the secretary with the address of the additional business location appearing on the face of the duplicate license. The duplicate license must be prominently displayed at the address indicated on the face of the license. This section is not to be interpreted as prohibiting a truth and deception examiner from administering examinations at locations other than that prescribed on the license.

**Source:** Laws 1980, LB 485, § 24; Laws 1982, LB 928, § 75.

**81-1925 Licenses; revenue placed in General Fund.**

The revenue derived from all licenses issued pursuant to sections 81-1901 to 81-1936 shall be placed in the General Fund.

**Source:** Laws 1980, LB 485, § 25.

**81-1926 Public examiner; fee; private examination; second license required; violation; penalty.**

Any public examiner license fee shall be paid by the agency or political subdivision employing the examiner or intern. Any public examiner whose license indicates the address of the public institution employing the examiner shall, prior to performing any private examination, obtain a second truth and deception examiner's license. The public examiner shall meet the requirements prescribed in sections 81-1916, 81-1917, and 81-1921 to 81-1924 and shall pay the annual renewal fee prescribed by section 81-1921 when applying for a second license. Failure to obtain a second license when administering truth and deception examinations as a private examiner shall, except upon a showing of

good cause, result in suspension of the first license for a period of three months after a hearing held upon ten days' notice by the secretary or his representative. At such hearing the public examiner may present evidence and call witnesses.

**Source:** Laws 1980, LB 485, § 26.

**81-1927 Licensee; change of address; notify Secretary of State.**

A licensee shall notify the secretary in writing within ten days after any change in address of a licensee's office or business location. The secretary shall issue a new license for the remainder of the license period which contains the new address.

**Source:** Laws 1980, LB 485, § 27.

**81-1928 License; denied, suspended, revoked; grounds; hearing.**

The secretary may deny, suspend, or revoke any license, after a hearing held in accordance with the Administrative Procedure Act, for any one or more of the following grounds:

- (1) Failure to inform a subject to be examined as to the nature of the examination;
- (2) Failure to inform a subject to be examined that participation is voluntary;
- (3) Asking questions during a polygraph or voice stress examination regarding the examinee's sexual practices, labor union, political or religious affiliations, or marital relationship, except when such questions have a bearing on the areas or issues under examination;
- (4) Material misstatement in the application for the original license or in the application for any renewal of license under sections 81-1901 to 81-1936;
- (5) Willful disregard or violation of sections 81-1901 to 81-1936 or any regulation or rule issued pursuant thereto including, but not limited to, willfully making a false report concerning an examination for polygraph or voice stress examination purposes;
- (6) Conviction of professionally related felony or any crime involving moral turpitude including, but not limited to, dishonesty, fraud, or unauthorized divulging or selling of information or evidence;
- (7) Making any willful misrepresentation or false promise or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or interns;
- (8) Having demonstrated incompetency to act as a polygraph or voice stress examiner;
- (9) Allowing a license under sections 81-1901 to 81-1936 to be used by any unlicensed person in violation of the provisions of sections 81-1901 to 81-1936;
- (10) Willfully aiding or abetting another in the violation of sections 81-1901 to 81-1936 or any rule or regulation issued pursuant thereto;
- (11) Adjudication of mental illness;
- (12) Failure, within a reasonable time, to provide information requested by the secretary as a result of a formal complaint in writing to the secretary or as a result of substantive information otherwise received by the secretary which would reasonably indicate a violation of sections 81-1901 to 81-1936 or any rule or regulation issued pursuant thereto; or

(13) Failing to inform the subject of the results of the examination if so required.

A license that is suspended shall be suspended for a definite period of time, not to exceed a period of two years. If a license is revoked it shall be revoked for not less than two years except as otherwise provided for in section 81-1921. Any person who has had his or her license revoked for cause may, after a period of two years, reapply to the board for reinstatement.

**Source:** Laws 1980, LB 485, § 28.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-1929 License; revoked, suspended; surrendered; when.**

Upon the revocation or suspension of any license, the licensee shall surrender the license to the secretary within thirty days after notification of such revocation or suspension. If the licensee fails to do so, the secretary may seize the license.

**Source:** Laws 1980, LB 485, § 29.

**81-1930 Licensee; service of process.**

Obtaining a license under sections 81-1901 to 81-1936 shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such licensee in any action arising out of the licensee's activity in this state.

**Source:** Laws 1980, LB 485, § 30; Laws 1983, LB 447, § 100.

**81-1931 Appeal; procedure.**

Any person aggrieved by final action of the secretary under the Licensing of Truth and Deception Examiners Act may appeal the final action, and such appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1980, LB 485, § 31; Laws 1988, LB 352, § 181.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**81-1932 Employee; use of truth and deception examination; when; limitation.**

No employer or prospective employer may require as a condition of employment or as a condition for continued employment that a person submit to a truth and deception examination unless such employment involves public law enforcement. This shall not be construed to prohibit such employer from asking an employee or applicant to submit to a truth and deception examination if:

(1) No questions are asked during the truth and deception examination concerning the examinee's sexual practices, labor union, political or religious affiliations, or marital relationships;

(2) The examinee is given written and oral notice that the examination is voluntary and that the examinee may discontinue the examination at any time;

(3) The employer or prospective employer has the employee or applicant sign a form stating that the examination is being taken voluntarily;

(4) Questions that are asked prospective employees are job related;

(5) Prospective employees are not preselected for a truth and deception examination in a discriminatory manner;

(6) An employee is only requested to submit to a truth and deception examination if such examination concerns itself with a specific investigation;

(7) The results of a truth and deception examination are not the sole determinant in the termination of employment; and

(8) All questions that are asked during a truth and deception examination and the responses of the examinee are kept on file by the employer for a period of one year.

**Source:** Laws 1980, LB 485, § 32.

Mandatory use of polygraph tests by employers are statutorily prohibited in Nebraska except for those engaged in public law enforcement. This section does not purport to make the results of polygraph examinations admissible in any proceeding. *Mathes v. City of Omaha*, 254 Neb. 269, 576 N.W.2d 181 (1998).

This section clearly sets forth a public policy prohibiting the use of a polygraph examination by an employer to deny employment. This section is a criminal statute and must be narrowly

construed. *White v. State*, 248 Neb. 977, 540 N.W.2d 354 (1995).

The plain language of subsection (7) requires that the employee be terminated if this section is to form the basis for further action against the employer. *Collins v. Baker's Supermarkets*, 223 Neb. 365, 389 N.W.2d 774 (1986).

This statute is a criminal statute and must be strictly construed. *Collins v. Baker's Supermarkets*, 223 Neb. 365, 389 N.W.2d 774 (1986).

### **81-1933 Employer; violation; penalty.**

Any employer or prospective employer who violates the provisions of section 81-1932 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1980, LB 485, § 33.

### **81-1934 Secretary of State; rules and regulations; adopt; forms.**

The secretary shall adopt and promulgate any rules and regulations and provide such forms as are necessary to carry out sections 81-1901 to 81-1936.

**Source:** Laws 1980, LB 485, § 34.

### **81-1935 Act; violation; penalty.**

Except as provided in section 81-1932, any person who violates the provisions of sections 81-1901 to 81-1936 or who falsely states or represents that he or she is or has been an examiner or intern shall be guilty of a Class II misdemeanor.

**Source:** Laws 1980, LB 485, § 35.

### **81-1936 Examiner's license; reciprocity; requirements.**

An applicant who is a truth and deception examiner licensed under laws of another state or territory of the United States may be issued an appropriate license by the secretary without examination if the secretary, in his or her discretion, determines the applicant has produced satisfactory proof that:

(1) He or she is at least nineteen years of age;

(2) He or she is of good moral character;

(3) The requirements for licensing of a truth and deception examiner in such state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements of sections 81-1901 to 81-1936;

(4) The applicant has lawfully engaged in the administration of truth and deception examinations under the laws of such state or territory for at least six months prior to the application for license;

(5) The other state or territory grants similar reciprocity to the license holders of this state;

(6) The applicant has complied with section 81-1930; and

(7) The applicant has paid the required fee.

**Source:** Laws 1980, LB 485, § 36.

## ARTICLE 20

### NEBRASKA STATE PATROL

#### Cross References

**Law enforcement**, training and reserves, see Chapter 81, article 14.

**Ticket quota requirements**, prohibited, see section 48-235.

#### (a) GENERAL PROVISIONS

Section	
81-2001.	Nebraska State Patrol; established; chief officer.
81-2002.	State patrol; superintendent; how designated; subordinate officers; employees; appointment; salaries; expense allowance; bond or insurance; premium, how paid.
81-2002.01.	Officers appointed to carrier enforcement division; status and training.
81-2003.	Superintendent; power to adopt rules and regulations; seal; maintenance of office.
81-2004.	State patrol; duties in general; Nebraska State Patrol Criminal Investigation Cash Fund; created; use; investment.
81-2004.01.	Carrier Enforcement Cash Fund; created; use; investment.
81-2004.02.	Nebraska State Patrol Cash Fund; created; use; investment.
81-2004.03.	Investigation Petty Cash Fund; authorized.
81-2004.04.	Funds and accounts; records; report; accounting.
81-2004.05.	Public Safety Cash Fund; created; use; investment.
81-2004.06.	Capitol Security Revolving Fund; created; use; investment.
81-2004.07.	Nebraska State Patrol Vehicle Replacement Cash Fund; created; use; investment.
81-2004.08.	Nebraska Public Safety Communication System Cash Fund; created; use; investment.
81-2005.	State patrol; powers and duties enumerated.
81-2006.	State patrol; patrolling highways; cooperation; duties; extension to freeways.
81-2007.	Uniform; badge.
81-2008.	Rules, orders of state patrol; failure to obey; penalty.
81-2009.	State patrol; officers, members; actions against; duty of Attorney General to defend; legal counsel; purpose.
81-2010.	Criminalistics laboratory; establish; services included; accreditation.
81-2010.01.	Child abuse and neglect; legislative findings.
81-2010.02.	Child abuse and neglect; investigator; qualifications; duties.
81-2010.03.	Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements.
81-2011.	George Amos, Jr.; sympathy; financial assistance.
81-2012.	George Amos, Jr.; appropriation; amount; payees.
81-2013.	Michael B. Amos Educational Trust Fund; James M. Amos Educational Trust Fund; created; purposes; investment.
81-2013.01.	Repealed. Laws 2004, LB 940, § 4.
81-2013.02.	Repealed. Laws 2004, LB 940, § 4.
81-2013.03.	Repealed. Laws 2004, LB 940, § 4.
81-2013.04.	Repealed. Laws 2004, LB 940, § 4.

Section

(b) RETIREMENT SYSTEM

- 81-2014. Terms, defined.
- 81-2014.01. Act, how cited.
- 81-2015. Nebraska State Patrol Retirement System; creation.
- 81-2016. Retirement system; membership; new employee; participation in another governmental plan; how treated; separate employment; effect.
- 81-2017. Retirement system; contributions; payment; funding of system.
- 81-2018. State Patrol Retirement Fund; State Patrol Retirement Act Expense Fund; created; use.
- 81-2019. Retirement system; administration; Public Employees Retirement Board; duties; rules and regulations.
- 81-2019.01. Board; power to adjust contributions and benefits.
- 81-2020. State Treasurer; duties; warrants.
- 81-2021. Retirement system; director; records; employer education program.
- 81-2022. Retirement system; funds; investment; charges.
- 81-2023. Auditor of Public Accounts; annual audit; report to Clerk of the Legislature.
- 81-2024. Retirement system; powers.
- 81-2025. Retirement; conditions; deferment of payment; board; duties.
- 81-2026. Retirement; annuity; officers; surviving spouse; children; benefit; disability or death in line of duty; benefit; maximum benefit.
- 81-2027. Retirement benefit; adjusted by increase in cost of living.
- 81-2027.01. Repealed. Laws 1998, LB 1191, § 85.
- 81-2027.02. Repealed. Laws 1998, LB 1191, § 85.
- 81-2027.03. Benefits; adjustment.
- 81-2027.04. Repealed. Laws 1999, LB 674, § 12.
- 81-2027.05. Annual benefit adjustment; terms, defined.
- 81-2027.06. Annual benefit adjustment; minimum accrual rate.
- 81-2027.07. Annual benefit adjustment; calculations.
- 81-2028. Retirement; disability; exceptions.
- 81-2029. Retirement; disability; proof.
- 81-2030. Retirement; disability; medical examinations; expense.
- 81-2031. Termination of employment; return of contributions, when; rejoining system; deferred annuity.
- 81-2031.01. Retirement system; reemployment; election to repay system; amount; status; exception.
- 81-2031.02. Retirement system; current employee; participation in another governmental plan; how treated.
- 81-2031.03. Direct rollover; terms, defined; distributee; powers; board; duties.
- 81-2031.04. Retirement system; accept payments and rollovers; limitations; board; duties.
- 81-2031.05. Retired officer; reemployment; how treated.
- 81-2031.06. Termination of employment prior to eligibility to retire; rejoining system; effect.
- 81-2031.07. Retirement system; accept transfers; limitations; how treated.
- 81-2032. Retirement system; funds; exemption from legal process; exception.
- 81-2033. Retirement; total service credit.
- 81-2034. Retirement; method of crediting for time served in armed forces; effect.
- 81-2035. Annuity; adjustment; amount.
- 81-2036. Annuity; additional adjustment; changes in family unit.
- 81-2037. Limitation of actions.
- 81-2038. False or fraudulent actions; prohibited acts; penalty; denial of benefits.
- 81-2039. Retirement system contributions, property, and rights; how treated.
- 81-2040. Termination of system or contributions; effect.
- 81-2041. DROP participation authorized; requirements; fees.

(a) GENERAL PROVISIONS

**81-2001 Nebraska State Patrol; established; chief officer.**

There is hereby established a department to be known as the Nebraska State Patrol. The chief officer of the Nebraska State Patrol shall be the Superintendent.

dent of Law Enforcement and Public Safety, who shall have had at least four years' experience as a law enforcement officer prior to his or her appointment.

**Source:** Laws 1937, c. 141, § 2, p. 507; Laws 1941, c. 176, § 4, p. 690; C.S.Supp.,1941, § 60-417; R.S.1943, § 60-431; Laws 1967, c. 391, § 1, p. 1215; R.S.1943, (1978), § 60-431; Laws 1981, LB 541, § 1.

Cross References

**Bond and requirements**, see section 84-106.

**81-2002 State patrol; superintendent; how designated; subordinate officers; employees; appointment; salaries; expense allowance; bond or insurance; premium, how paid.**

The superintendent, also designated as colonel, shall, with the approval of the Governor, appoint such subordinate officers of the Nebraska State Patrol as lieutenant colonel, majors, captains, lieutenants, sergeants, corporals, patrol officers, and such other employees as may be necessary to carry out the provisions of this act. The salaries of all such appointees shall be fixed by the superintendent, with the approval of the Governor. In addition to his or her salary, each sworn employee of the Nebraska State Patrol shall receive an expense allowance of one hundred dollars per month. All such appointees shall be bonded or insured as required by section 11-201. Premiums shall be paid from the fund appropriated to the Nebraska State Patrol.

**Source:** Laws 1937, c. 141, § 3, p. 507; Laws 1941, c. 176, § 5, p. 691; C.S.Supp.,1941, § 60-418; R.S.1943, § 60-432; Laws 1959, c. 286, § 4, p. 1085; Laws 1965, c. 386, § 1, p. 1240; Laws 1969, c. 510, § 1, p. 2089; Laws 1978, LB 653, § 20; R.S.1943, (1978), § 60-432; Laws 1981, LB 541, § 2; Laws 2004, LB 884, § 44.

Cross References

"**This act**", formerly defined in section 60-401. For the last printed version of section 60-401 see the 1988 Reissue of Volume 3B.

**81-2002.01 Officers appointed to carrier enforcement division; status and training.**

On and after July 20, 2002, officers of the Nebraska State Patrol appointed to the carrier enforcement division shall be officers of the Nebraska State Patrol with the powers and duties as prescribed in sections 81-2001 to 81-2009 and this section and shall receive training commensurate with such powers and duties prior to appointment to the carrier enforcement division.

**Source:** Laws 2002, LB 470, § 3.

**81-2003 Superintendent; power to adopt rules and regulations; seal; maintenance of office.**

The Superintendent of Law Enforcement and Public Safety is hereby authorized to adopt, promulgate, and enforce rules and regulations, consistent with this act, to carry out sections 81-2001 to 81-2009, including the use, purpose, and contents of warning and violation cards. The Superintendent of Law Enforcement and Public Safety shall adopt an official seal for the use of the Nebraska State Patrol. The Superintendent of Law Enforcement and Public Safety shall maintain an office or offices for law enforcement and public safety in such places in the state as he or she may deem necessary to properly carry

out the work and the administration of laws pertaining to the Nebraska State Patrol.

**Source:** Laws 1937, c. 141, § 5, p. 508; Laws 1941, c. 176, § 7, p. 691; C.S.Supp.,1941, § 60-420; R.S.1943, § 60-433; Laws 1957, c. 366, § 41, p. 1274; Laws 1959, c. 286, § 5, p. 1085; R.S.1943, (1978), § 60-433; Laws 1981, LB 541, § 3; Laws 1985, LB 395, § 12; Laws 2002, LB 470, § 5.

**Cross References**

"This act", formerly defined in section 60-401. For the last printed version of section 60-401 see the 1988 Reissue of Volume 3B.

**81-2004 State patrol; duties in general; Nebraska State Patrol Criminal Investigation Cash Fund; created; use; investment.**

The Nebraska State Patrol, its subordinate officers such as lieutenant colonel, majors, captains, lieutenants, sergeants, corporals, patrolmen, and other employees shall be used primarily for the enforcement of the traffic and motor vehicle laws of the State of Nebraska and the handling of traffic within the state, except:

(1) The Superintendent of Law Enforcement and Public Safety, with the approval of the Governor, may designate such personnel of the Nebraska State Patrol to qualify and act as his or her deputies or investigators to assist him or her in the enforcement of the laws of the state relating to felonies, and the superintendent shall designate and train fifteen investigators in addition to those authorized on September 2, 1973, to assist in such law enforcement;

(2) The superintendent shall designate and train ten special investigators in addition to those authorized on July 12, 1974, to assist him or her and all other law enforcement agencies in this state with enforcement of drug control legislation. As an aid to such special investigators, the superintendent shall appoint two stenographers and one laboratory technician in addition to those authorized on September 2, 1973; and

(3) The Nebraska State Patrol shall provide security for all buildings and grounds owned or leased by the State of Nebraska in Lincoln, Nebraska, except the buildings and grounds described in subsection (5) of section 81-1108.15.

There is hereby created in the state treasury a cash fund to be known as the Nebraska State Patrol Criminal Investigation Cash Fund which shall be used for the enforcement of any state law relating to felonies. Any money in the 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.

**Source:** Laws 1937, c. 141, § 4, p. 508; Laws 1941, c. 176, § 6, p. 691; C.S.Supp.,1941, § 60-419; R.S.1943, § 60-434; Laws 1969, c. 510, § 2, p. 2089; Laws 1972, LB 1456, § 1; Laws 1973, LB 13, § 1; Laws 1974, LB 77, § 1; R.S.1943, (1978), § 60-434; Laws 1984, LB 403, § 4; Laws 1995, LB 7, § 133; Laws 2004, LB 439, § 31.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2004.01 Carrier Enforcement Cash Fund; created; use; investment.**

The Carrier Enforcement Cash Fund is created. The fund shall be established within the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of fund transfers made each fiscal year from the Roads Operations Cash Fund as authorized by the Legislature through the budget process. The Carrier Enforcement Cash Fund shall only be used to pay the costs associated with the operation of the carrier enforcement division of the patrol, except that the Legislature may authorize fund transfers each fiscal year through the budget process from the Carrier Enforcement Cash Fund to the Nebraska Public Safety Communication System Cash Fund to pay the carrier enforcement division's share of operations costs of the Nebraska Public Safety Communication System. Any money in the Carrier Enforcement 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.

**Source:** Laws 2007, LB322, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2004.02 Nebraska State Patrol Cash Fund; created; use; investment.**

There is hereby created the Nebraska State Patrol Cash Fund. Money from this fund shall be used to defray expenses incident to the administration of the Nebraska State Patrol. All funds received by the Nebraska State Patrol for services rendered shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund. Such fund shall be administered by the Superintendent of Law Enforcement and Public Safety.

Allowable uses of the fund shall include, but not be limited to, defraying the cost of:

- (1) The vehicle identification inspection program established in sections 60-181 to 60-189;
- (2) Investigations of odometer and motor vehicle fraud, motor vehicle licensing violations, and motor vehicle theft; and
- (3) Other investigative expenses when money is specifically appropriated by the Legislature for such purposes.

Any money in the 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.

**Source:** Laws 1986, LB 851, § 1; Laws 1995, LB 7, § 134; Laws 2002, Second Spec. Sess., LB 1, § 9; Laws 2005, LB 276, § 112.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2004.03 Investigation Petty Cash Fund; authorized.**

The Superintendent of Law Enforcement and Public Safety may apply to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain an Investigation Petty Cash Fund. The funds used to initiate and maintain the Investigation Petty Cash Fund shall be drawn solely from the Nebraska State Patrol Cash Fund. The superintendent shall determine

the amount of money to be held in the Investigation Petty Cash Fund, consistent with carrying out the duties and responsibilities of section 81-2004.02, but not to exceed fifteen thousand dollars for the entire agency. This restriction shall not apply to General Funds that have been specifically appropriated to the Nebraska State Patrol Cash Fund for investigative purposes. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of such fund, a voucher shall be submitted to the Department of Administrative Services accompanied by such information as the department may require for the establishment of the fund. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the Nebraska State Patrol. Such fund may be replenished as necessary. The Investigation Petty Cash Fund shall be audited by the Auditor of Public Accounts.

**Source:** Laws 1986, LB 851, § 2.

**81-2004.04 Funds and accounts; records; report; accounting.**

For the purpose of establishing and maintaining legislative oversight and accountability, the Nebraska State Patrol shall maintain records of all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Cash Fund and the Investigation Petty Cash Fund.

By September 15 of each year, the patrol shall report to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst the unexpended balance existing on June 30 of the previous fiscal year relating to investigative expenses in (1) the Nebraska State Patrol Cash Fund, (2) the Investigation Petty Cash Fund, (3) any special checking account or accounts used by the patrol in carrying out the duties specified in section 81-2004.02, and (4) any funds existing on June 30 of the previous fiscal year in the possession of personnel of the patrol involved in investigations.

The Legislature may require a separate accounting of the investigation funds according to specific types of investigations.

**Source:** Laws 1986, LB 851, § 3.

**81-2004.05 Public Safety Cash Fund; created; use; investment.**

There is hereby created the Public Safety Cash Fund. All forfeitures and proceeds received by the Nebraska State Patrol under the federal Equitable Sharing Provisions or any other federal agreement from any agency of the federal government on or after July 10, 1990, shall be deposited in the fund. This section shall not apply to funds otherwise subject to sections 28-431 and 28-1439.02. The fund shall be used only in accordance with the applicable requirements of the federal government. The fund shall be administered by the Superintendent of Law Enforcement and Public Safety. Any money in the 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.

**Source:** Laws 1990, LB 920, § 1; Laws 1994, LB 1066, § 127; Laws 1995, LB 15, § 4.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-2004.06 Capitol Security Revolving Fund; created; use; investment.**

The Capitol Security Revolving Fund is created. The fund shall be established within the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of fund transfers made each fiscal year from the State Building Revolving Fund, as authorized by the Legislature through the budget process, and any other revenue received by the state capitol security division of the patrol from separate security agreements with state agencies. The Capitol Security Revolving Fund shall only be used to pay the non-general-fund costs associated with the operation of the state capitol security division. Any money in the Capitol Security Revolving 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.

**Source:** Laws 2007, LB322, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2004.07 Nebraska State Patrol Vehicle Replacement Cash Fund; created; use; investment.**

The Nebraska State Patrol Vehicle Replacement Cash Fund is created. The Superintendent of Law Enforcement and Public Safety of the Nebraska State Patrol shall administer the fund. The fund shall be used to purchase motor vehicles for the Nebraska State Patrol. Any money in the 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.

**Source:** Laws 1995, LB 381, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2004.08 Nebraska Public Safety Communication System Cash Fund; created; use; investment.**

The Nebraska Public Safety Communication System Cash Fund is created. The fund shall be established within the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of all revenue credited pursuant to law, including any fund transfers authorized by the Legislature. The fund shall only be used to pay the patrol's direct costs related to administering, operating, and maintaining the Nebraska Public Safety Communication System, except that any unobligated money in the fund may first be used to reduce the patrol's General Fund costs to operate the Nebraska Public Safety Communication System, and if additional unobligated money in the fund exists, the Legislature may transfer money from the fund to the State Fire Marshal and the Game and Parks Commission to reduce the General Fund costs to operate the Nebraska Public Safety Communication System. Any money in the 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.

**Source:** Laws 2007, LB322, § 4.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2005 State patrol; powers and duties enumerated.**

On and after July 20, 2002, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol, except all carrier enforcement officers assigned to the carrier enforcement division, shall have the power:

(1) Of peace officers for the purpose of enforcing the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, and any other law regulating the registration or operation of vehicles or the use of the highways;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, or any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(3) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of the state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(4) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require notwithstanding the provisions of law;

(5) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration card issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration card thereon and to require the drivers of motor vehicles to present such vehicles within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(6) To inspect any vehicle of a type required to be registered under the Motor Vehicle Registration Act in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking;

(7) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways;

(8) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws; and

(9) To operate weighing stations and portable scales and to perform carrier enforcement powers and duties prescribed in sections 60-1301 to 60-1309.

Carrier enforcement officers appointed to the carrier enforcement division before July 20, 2002, shall have the powers and duties prescribed in sections 60-1301 to 60-1309.

**Source:** Laws 1937, c. 141, § 6, p. 508; Laws 1939, c. 78, § 6, p. 321; Laws 1941, c. 176, § 8, p. 691; C.S.Supp.,1941, § 60-421; R.S.

1943, § 60-435; Laws 1959, c. 295, § 1, p. 1102; R.S.1943, (1978), § 60-435; Laws 1985, LB 395, § 13; Laws 1993, LB 370, § 490; Laws 2002, LB 470, § 6; Laws 2005, LB 274, § 283.

#### Cross References

**Motor Vehicle Operator's License Act**, see section 60-462.

**Motor Vehicle Registration Act**, see section 60-301.

**Nebraska Rules of the Road**, see section 60-601.

This section enumerates the powers, but not necessarily all of the duties of a State Patrol trooper. *Hauser v. Nebraska Police Stds. Adv. Council*, 269 Neb. 541, 694 N.W.2d 171 (2005).

Investigative stop and search of auto by police held unconstitutional where officer had no reasonable suspicion the occupants were committing, had committed, or were about to commit a crime. *State v. Colgrove*, 198 Neb. 319, 253 N.W.2d 20 (1977).

In the absence of any proof of factual foundation, a mere radio dispatch to an officer to stop a vehicle does not constitute a "reasonably founded" suspicion authorizing detention. *State v. Benson*, 198 Neb. 14, 251 N.W.2d 659 (1977).

This section is constitutional and authorizes officers of the law to conduct routine stops of motor vehicles to check registration and operator's licenses even though there is no probable cause to believe a violation of law has occurred or is occurring. *State v. Shepardson*, 194 Neb. 673, 235 N.W.2d 218 (1975).

In enforcing licensing laws, officers are authorized to stop vehicles. *State v. Holmberg*, 194 Neb. 337, 231 N.W.2d 672 (1975).

The provisions of this section furnish no authority for an officer to issue an order to a person not under arrest to follow him where the offense involved was not a felony nor a violation

of any law regulating the operation of vehicles or use of the highway. *State v. Embrey*, 188 Neb. 649, 198 N.W.2d 322 (1972).

Carrier enforcement officers are not granted the full realm of powers possessed by State Patrol troopers; rather, they are granted only those powers specifically enumerated in section 60-1306, which limits their powers to arrest only for stated violations which are viewed by the officer while performing a function specifically related to the duties enumerated in subsections (1) and (2) of section 60-1306 or a function specifically related to those duties addressed in the statutes and laws referred to in subsections (3), (4), and (5) of section 60-1306. *State v. Langan*, 6 Neb. App. 739, 577 N.W.2d 752 (1998).

Federal district court reversed for error in granting habeas corpus relief on Fourth Amendment grounds to state prisoner who had received full and fair hearing in state court with respect to alleged violations of his Fourth Amendment rights. *Holmberg v. Parratt*, 548 F.2d 745 (8th Cir. 1977).

Where officer's only reason for stopping automobile was for baseless check to determine if it carried front license plate, search pursuant to stop was unreasonable and court abstains from comment on constitutionality of section. *United States v. Bell*, 383 F.Supp. 1298 (D. Neb. 1974).

### **81-2006 State patrol; patrolling highways; cooperation; duties; extension to freeways.**

The Superintendent of Law Enforcement and Public Safety through his or her subordinate officers or employees in the Nebraska State Patrol shall properly patrol the highways of this state and cooperate with sheriffs, police officers, or other peace officers in enforcing the laws regulating the registration, operation, and use of vehicles upon the highway, including the specific enforcement of maximum speed limits. Performance of all duties, powers, and exercise of jurisdiction of the Nebraska State Patrol shall extend to all freeways as defined in section 60-621 or any part thereof which is located within the jurisdictional limits of local authority. Officers and employees of the patrol shall cooperate with sheriffs, police officers, or any other local peace officers, and such officers will share concurrent jurisdiction with the patrol concerning any such freeway within local limits.

**Source:** Laws 1937, c. 141, § 8, p. 509; Laws 1941, c. 176, § 10, p. 693; C.S.Supp., 1941, § 60-423; R.S.1943, § 60-437; Laws 1961, c. 184, § 36, p. 567; R.S.1943, (1978), § 60-437; Laws 1993, LB 370, § 491; Laws 1996, LB 901, § 12.

This section does not furnish a foundation for an order by an officer to a person not under arrest to follow the officer. *State v. Embrey*, 188 Neb. 649, 198 N.W.2d 322 (1972).

### **81-2007 Uniform; badge.**

The subordinate officers of the Nebraska State Patrol, when on duty, shall be dressed in distinctive uniform and display a badge of office, except that the superintendent may authorize not more than thirty-five percent of such officers

to be on duty without wearing a distinct uniform. The superintendent shall issue to each member of the Nebraska State Patrol a serially numbered badge of office with the seal of this state in the center thereof, the words Nebraska State Patrol encircling the seal, and containing the designation of the position held by the subordinate officer.

**Source:** Laws 1937, c. 141, § 9, p. 509; Laws 1941, c. 176, § 11, p. 693; C.S.Supp.,1941, § 60-424; R.S.1943, (1978), § 60-438; Laws 1986, LB 851, § 16.

**81-2008 Rules, orders of state patrol; failure to obey; penalty.**

Any person who fails or refuses to obey any lawful traffic direction or any lawful order of the superintendent or any of the subordinate officers or employees of the Nebraska State Patrol or who resists lawful arrest by the superintendent or any of his subordinate officers or employees, shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1937, c. 141, § 7, p. 509; Laws 1941, c. 176, § 9, p. 692; C.S.Supp.,1941, § 60-422; R.S.1943, § 60-436; Laws 1977, LB 39, § 83; R.S.1943, (1978), § 60-436.

**81-2009 State patrol; officers, members; actions against; duty of Attorney General to defend; legal counsel; purpose.**

(1) The Attorney General, or a member of his staff, or a practicing attorney designated by the Attorney General, shall defend all civil and criminal actions instituted against the superintendent or any subordinate officer or employee of the Nebraska State Patrol arising from their employment.

(2) The superintendent shall provide not less than three agency legal counsels stationed with the Nebraska State Patrol to assist county attorneys in the preparation of cases involving drug abuse and to advise the patrol on all legal matters.

**Source:** Laws 1937, c. 141, § 10, p. 510; Laws 1941, c. 176, § 12, p. 693; C.S.Supp.,1941, § 60-425; R.S.1943, § 60-439; Laws 1973, LB 14, § 1; Laws 1977, LB 294, § 1; R.S.1943, (1978), § 60-439.

**81-2010 Criminalistics laboratory; establish; services included; accreditation.**

A criminalistics laboratory is hereby established within the Nebraska State Patrol, under the direction of the Superintendent of Law Enforcement and Public Safety. The laboratory shall perform services necessary for the recognition and proper preservation, identification, and scientific analysis of evidence materials pertaining to the investigation of crimes. By October 1, 2003, the laboratory shall have met the requirements for accreditation by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center and have applied for accreditation.

**Source:** Laws 1971, LB 477, § 1; R.S.1943, (1978), § 60-434.01; Laws 2001, LB 432, § 12.

**81-2010.01 Child abuse and neglect; legislative findings.**

The Legislature finds that child abuse and neglect are community problems requiring immediate and appropriate response by law enforcement and other agencies. It is the intent of the Legislature to ensure that all persons responsible for responding to such reports are provided with adequate resources with which to investigate such reports, including appropriate training and access to information sources, particularly in rural areas of the state.

**Source:** Laws 1996, LB 842, § 1.

**81-2010.02 Child abuse and neglect; investigator; qualifications; duties.**

The Nebraska State Patrol shall provide immediate responses to inquiries from local law enforcement in rural areas of the state regarding proper investigatory procedures related to child abuse and neglect. All calls shall be referred to an investigator of the Nebraska State Patrol who has completed training and is knowledgeable in:

- (1) Screening child abuse and neglect calls;
- (2) Interviewing alleged child abuse and neglect victims at the appropriate developmental level necessary;
- (3) Family dynamics, including the ability to assess and handle child abuse and neglect and child sexual abuse cases;
- (4) Understanding the medical evidence and other physical evidence in child abuse and neglect and child sexual abuse cases and how to gather such evidence;
- (5) How to prepare evidence for prosecution; and
- (6) Evaluating the potential for false allegations.

The investigator shall maintain and make available to local law enforcement a list of psychiatrists, psychologists, mental health practitioners, or other qualified professionals in the particular area where the incident occurred.

**Source:** Laws 1996, LB 842, § 2.

**81-2010.03 Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements.**

(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the Nebraska State Patrol if the patrol is the primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under section 81-2010, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

**Source:** Laws 1996, LB 1213, § 2; Laws 2001, LB 432, § 13.

**Cross References**

Primary investigating law enforcement agency, determination, see section 13-608.

**81-2011 George Amos, Jr.; sympathy; financial assistance.**

The Legislature, while recognizing that nothing it might do can compensate them for their loss, nevertheless wishes to extend its sympathy and financial assistance to the family of slain Trooper George Amos, Jr., such family consisting of Mrs. Dolores Ann Amos, widow, and Michael B. Amos and James M. Amos, sons.

**Source:** Laws 1973, LB 585, § 1; R.S.1943, (1978), § 60-440.01.

**81-2012 George Amos, Jr.; appropriation; amount; payees.**

There is hereby appropriated out of funds in the General Fund not otherwise appropriated the sum of fifteen thousand dollars to provide financial assistance to the family of Trooper George Amos, Jr. Upon May 21, 1973, the Director of Administrative Services shall draw his warrant upon the General Fund in the amount of seven thousand dollars in favor of Dolores Ann Amos and forward such warrant to her.

**Source:** Laws 1973, LB 585, § 2; R.S.1943, (1978), § 60-440.02.

**81-2013 Michael B. Amos Educational Trust Fund; James M. Amos Educational Trust Fund; created; purposes; investment.**

The State Treasurer shall, on May 21, 1973, establish in the state treasury two trust funds in the amount of four thousand dollars each, one to be known as the Michael B. Amos Educational Trust Fund and the other to be known as the James M. Amos Educational Trust Fund. Each such fund shall be expended solely for the purpose of providing financial assistance to the named beneficiary thereof in obtaining post-high school education. Disbursements from each of such funds shall be made upon application of the named beneficiary thereof and upon a showing that he is pursuing a course of post-high school education and may continue so long as he is pursuing such course and money remains in the fund. Any unexpended balance in either fund shall lapse to the General Fund upon (1) completion of the course of study or (2) discontinuance of such course prior to completion for a consecutive period of two years but any time spent on active duty in the armed forces of the United States shall not count as part of such two-year period. The entire amount in the Michael B. Amos Educational Trust Fund shall lapse to the General Fund on July 21, 1990, if the named beneficiary has not started a course of post-high school education prior to such date. The entire amount in the James M. Amos Educational Trust Fund shall lapse to the General Fund on October 7, 1993, if the named beneficiary has not started a course of post-high school education prior to such date. All money in each such 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 for the benefit of the fund.

**Source:** Laws 1973, LB 585, § 3; R.S.1943, (1978), § 60-440.03; Laws 1995, LB 7, § 135.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-2013.01 Repealed. Laws 2004, LB 940, § 4.**

**81-2013.02 Repealed. Laws 2004, LB 940, § 4.**

**81-2013.03 Repealed. Laws 2004, LB 940, § 4.**

**81-2013.04 Repealed. Laws 2004, LB 940, § 4.**

## (b) RETIREMENT SYSTEM

**81-2014 Terms, defined.**

For purposes of the Nebraska State Patrol Retirement Act:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

(2) Board means the Public Employees Retirement Board;

(3)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means (a) until July 1, 2000, the initial benefit increased by all adjustments made pursuant to section 81-2027.04 and (b) on or after July 1, 2000, the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) DROP means the deferred retirement option plan as provided in section 81-2041;

(7) DROP period means the amount of time the member elects to participate in DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election;

(8) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(9) Initial benefit means the retirement benefit calculated at the time of retirement;

(10) Officer means an officer provided for in sections 81-2001 to 81-2009;

(11) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(12) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(13) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(14) Service means employment as a member of the Nebraska State Patrol and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(15) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(16) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased and the date when the employer-employee relationship commenced with the Nebraska State Patrol or another state agency.

**Source:** Laws 1947, c. 211, § 1, p. 687; Laws 1969, c. 511, § 1, p. 2092; R.S.1943, (1978), § 60-441; Laws 1989, LB 506, § 13; Laws

1991, LB 549, § 47; Laws 1994, LB 833, § 34; Laws 1995, LB 501, § 7; Laws 1996, LB 700, § 13; Laws 1996, LB 847, § 34; Laws 1996, LB 1076, § 32; Laws 1996, LB 1273, § 27; Laws 1997, LB 624, § 27; Laws 1999, LB 674, § 7; Laws 2000, LB 1192, § 19; Laws 2001, LB 408, § 19; Laws 2002, LB 470, § 7; Laws 2003, LB 451, § 21; Laws 2007, LB324, § 1.

Cross References

Spousal Pension Rights Act, see section 42-1101.

**81-2014.01 Act, how cited.**

Sections 81-2014 to 81-2041 shall be known and may be cited as the Nebraska State Patrol Retirement Act.

**Source:** Laws 1996, LB 847, § 33; Laws 1997, LB 624, § 28; Laws 1998, LB 532, § 9; Laws 1998, LB 1191, § 64; Laws 2001, LB 408, § 20; Laws 2002, LB 407, § 48; Laws 2007, LB324, § 2.

**81-2015 Nebraska State Patrol Retirement System; creation.**

A retirement system is hereby created and established to be known as the Nebraska State Patrol Retirement System. It is the legislative intent and purpose of sections 81-2014 to 81-2036 to provide certain retirement and other benefits for officers of the Nebraska State Patrol in the amounts and under the terms and conditions set forth in such sections. It is further the legislative intent and purpose of such sections that when and if the Social Security Act, or any amendment thereto, or any similar or related federal act shall be enacted or amended so as to permit the inclusion of such officers of the Nebraska State Patrol, the State of Nebraska may at its election through appropriate legislative action adjust the benefits provided in such sections and the contributions called for so that the fund provided for by such sections or any amendments thereto may become merged with or integrated with the federal social security system.

**Source:** Laws 1947, c. 211, § 2, p. 687; Laws 1967, c. 391, § 2, p. 1215; Laws 1969, c. 511, § 2, p. 2093; R.S.1943, (1978), § 60-442; Laws 1991, LB 549, § 48; Laws 1994, LB 833, § 35.

**81-2016 Retirement system; membership; new employee; participation in another governmental plan; how treated; separate employment; effect.**

(1) Every member of the Nebraska State Patrol who was employed by the State of Nebraska as such, on September 7, 1947, and every person employed as a member of such patrol thereafter, shall be a member of the system, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska.

(2) Within the first thirty days of employment, a member may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned.

(3) Any officer who qualifies for membership pursuant to subsection (1) of this section may not be disqualified from membership in the retirement system

solely because such officer also maintains separate employment which qualifies the officer for membership in another public retirement system, nor may membership in this retirement system disqualify such an officer from membership in another public retirement system solely by reason of separate employment which qualifies such officer for membership in this retirement system.

(4) Information necessary to determine membership shall be provided by the Nebraska State Patrol.

(5) The board may adopt and promulgate rules and regulations governing the assessment and granting of eligibility and vesting credit.

**Source:** Laws 1947, c. 211, § 3, p. 687; R.S.1943, (1978), § 60-443; Laws 1995, LB 501, § 8; Laws 1996, LB 1076, § 33; Laws 1997, LB 624, § 29; Laws 1998, LB 1191, § 65; Laws 2000, LB 1192, § 20; Laws 2002, LB 407, § 49; Laws 2002, LB 470, § 8.

**81-2017 Retirement system; contributions; payment; funding of system.**

(1) Commencing July 1, 2005, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to thirteen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2005, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of fifteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required

pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

**Source:** Laws 1947, c. 211, § 4, p. 688; Laws 1959, c. 286, § 6, p. 1085; Laws 1965, c. 387, § 1, p. 1243; Laws 1971, LB 987, § 10; Laws 1975, LB 235, § 1; R.S.1943, (1978), § 60-444; Laws 1981, LB 462, § 5; Laws 1984, LB 218, § 4; Laws 1989, LB 506, § 14; Laws 1991, LB 549, § 49; Laws 1994, LB 833, § 36; Laws 1994, LB 1287, § 1; Laws 1995, LB 369, § 6; Laws 1995, LB 574, § 81; Laws 2001, LB 408, § 21; Laws 2002, LB 407, § 50; Laws 2004, LB 514, § 1; Laws 2005, LB 503, § 12; Laws 2006, LB 1019, § 12; Laws 2007, LB324, § 4.

**81-2018 State Patrol Retirement Fund; State Patrol Retirement Act Expense Fund; created; use.**

(1) Except as provided in subsection (2) of this section, all money received by the Nebraska State Patrol Retirement System shall be remitted to the State Treasurer for credit to the State Patrol Retirement Fund which is hereby created. Out of the fund shall be paid the benefits and annuities as provided in the Nebraska State Patrol Retirement Act.

(2) The State Patrol Retirement Act Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the Nebraska State Patrol Retirement Act and necessary in connection with the administration and operation of the retirement system.

**Source:** Laws 1947, c. 211, § 5, p. 688; Laws 1959, c. 286, § 7, p. 1086; Laws 1967, c. 391, § 3, p. 1216; Laws 1969, c. 511, § 4, p. 2094; R.S.1943, (1978), § 60-445; Laws 1991, LB 549, § 50; Laws 1994, LB 833, § 37; Laws 2001, LB 408, § 22; Laws 2005, LB 364, § 16.

**81-2019 Retirement system; administration; Public Employees Retirement Board; duties; rules and regulations.**

The general administration of the Nebraska State Patrol Retirement System, except the investment of funds, is hereby vested in the board. The board shall adopt and promulgate rules and regulations as may be necessary to carry out the Nebraska State Patrol Retirement Act. The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act.

**Source:** Laws 1947, c. 211, § 6, p. 688; Laws 1967, c. 391, § 4, p. 1216; Laws 1967, c. 486, § 39, p. 1529; Laws 1971, LB 987, § 11; R.S.1943, (1978), § 60-446; Laws 1991, LB 549, § 51; Laws 1994, LB 833, § 38; Laws 1995, LB 369, § 7; Laws 1996, LB 847, § 35.

**81-2019.01 Board; power to adjust contributions and benefits.**

(1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of sections 81-2014 to 81-2036, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 35.

**81-2020 State Treasurer; duties; warrants.**

The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the State Patrol Retirement Fund. The State Treasurer shall disburse money from such fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

**Source:** Laws 1947, c. 211, § 7, p. 689; Laws 1971, LB 987, § 12; R.S.1943, (1978), § 60-447; Laws 1991, LB 549, § 52; Laws 1997, LB 623, § 34.

**81-2021 Retirement system; director; records; employer education program.**

(1) The director in charge of the system shall keep a record of all acts and proceedings taken by the board. He or she shall keep a complete record of all

members with respect to name, current address, age, contributions, length of service, compensation, and any other facts as may be necessary in the administration of the Nebraska State Patrol Retirement Act. The board shall prescribe the form in which such information shall be reported by the Nebraska State Patrol to the board. The information in the records shall be provided by the Nebraska State Patrol in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1947, c. 211, § 8, p. 689; Laws 1971, LB 987, § 13; R.S.1943, (1978), § 60-448; Laws 1991, LB 549, § 53; Laws 1994, LB 833, § 39; Laws 2000, LB 1192, § 21; Laws 2005, LB 503, § 13.

#### **81-2022 Retirement system; funds; investment; charges.**

Any funds of the Nebraska State Patrol Retirement System available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the board, and the Nebraska Retirement Systems Committee.

The state investment officer shall sell any securities upon request from the director so as to provide money for the payment of benefits or annuities.

**Source:** Laws 1947, c. 211, § 9, p. 689; Laws 1967, c. 486, § 40, p. 1530; Laws 1969, c. 584, § 59, p. 2382; R.S.1943, (1978), § 60-449; Laws 1986, LB 311, § 24; Laws 1991, LB 549, § 54; Laws 1994, LB 1066, § 128.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **81-2023 Auditor of Public Accounts; annual audit; report to Clerk of the Legislature.**

It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system, and an annual report to the Clerk of the Legislature of

its condition. Each member of the Legislature shall receive a copy of such report by making a request for it to the Auditor of Public Accounts.

**Source:** Laws 1947, c. 211, § 10, p. 689; Laws 1971, LB 987, § 14; Laws 1979, LB 322, § 24; R.S.Supp.,1980, § 60-450.

**81-2024 Retirement system; powers.**

The system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

**Source:** Laws 1947, c. 211, § 11, p. 690; R.S.1943, (1978), § 60-451; Laws 1996, LB 847, § 36.

**81-2025 Retirement; conditions; deferment of payment; board; duties.**

(1) Every officer who has been in the employ of the state as such and who becomes disabled and physically unfit to perform the duties of an officer shall be entitled to retire and receive an annuity as provided by law.

(2) Every officer who has been in the employ of the state as such for ten years or more, as calculated in section 81-2033, and has attained the age of fifty years or more shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(3) Any officer who has attained the age of sixty years upon his or her separation from state service but who has not been in the employ of the state for ten years as such shall be entitled to the annuity as provided for in the Nebraska State Patrol Retirement Act.

(4) Every officer who has been in the employ of the state as such for twenty-five years or more, as calculated in section 81-2033, and has attained the age of fifty years shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years with twenty-five years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(5) Every officer who has been in the employ of the state as such for thirty years or more, as calculated in section 81-2033, shall be entitled to retire and receive an annuity as provided by law. The right to retire with thirty years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(6) Payment of any benefit provided under the act may not be deferred later than April 1 of the year following the year in which the officer has both attained at least age seventy and one-half years and terminated his or her employment with the Nebraska State Patrol.

(7) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

(8) The board shall make reasonable efforts to locate the officer or the officer's beneficiary and distribute benefits by the required beginning date as

specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the account shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any officer would otherwise receive under the Nebraska State Patrol Retirement Act.

**Source:** Laws 1947, c. 211, § 12(1), p. 690; Laws 1953, c. 333, § 1, p. 1093; Laws 1969, c. 510, § 3, p. 2090; Laws 1969, c. 511, § 7, p. 2095; Laws 1975, LB 235, § 2; R.S.1943, (1978), § 60-452; Laws 1986, LB 311, § 25; Laws 1989, LB 506, § 15; Laws 1990, LB 953, § 1; Laws 1993, LB 724, § 15; Laws 1994, LB 833, § 40; Laws 1994, LB 1306, § 5; Laws 1997, LB 623, § 35; Laws 1997, LB 624, § 30; Laws 2003, LB 451, § 22.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**81-2026 Retirement; annuity; officers; surviving spouse; children; benefit; disability or death in line of duty; benefit; maximum benefit.**

(1)(a) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The annuity payments shall continue until the end of the calendar month in which the officer dies. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of creditable service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

(b) For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of creditable service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

(c) For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six, and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's

monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of creditable service. If the officer has completed more than seventeen years of creditable service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of creditable service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, benefits shall be provided as a percentage of the amount of the officer's annuity, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If there is no surviving spouse or no dependent child or children of the officer under nineteen years of age, the amount of benefit such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If

such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate.

(4) Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability.

(5) Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life or until the surviving spouse remarries;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If no benefits are paid to a surviving spouse or dependent child or children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(6) Any changes made to this section by Laws 2004, LB 1097, shall apply only to retirements, disabilities, and deaths occurring on or after July 16, 2004.

**Source:** Laws 1953, c. 333, § 2, p. 1093; Laws 1957, c. 276, § 1, p. 1004; Laws 1959, c. 296, § 1, p. 1104; Laws 1961, c. 307, § 6, p. 973; Laws 1965, c. 386, § 2, p. 1241; Laws 1969, c. 510, § 4, p. 2090; Laws 1969, c. 511, § 8, p. 2095; Laws 1974, LB 1004, § 1; Laws 1975, LB 235, § 3; Laws 1976, LB 644, § 1; Laws 1977, LB 347, § 1; Laws 1979, LB 80, § 107; R.S.Supp.,1980, § 60-452.01; Laws 1981, LB 462, § 6; Laws 1986, LB 311, § 26; Laws 1987, LB 493, § 1; Laws 1989, LB 506, § 16; Laws 1990, LB 953, § 2; Laws 1991, LB 549, § 55; Laws 1993, LB 724, § 16; Laws 1994, LB 833, § 41; Laws 1994, LB 1306, § 6; Laws 1996, LB 847, § 37; Laws 1996, LB 1273, § 28; Laws 1997, LB 623, § 36; Laws 1997, LB 624, § 31; Laws 2004, LB 1097, § 30; Laws 2006, LB 1019, § 13.

Where plaintiffs had been members of the system prior to administrative change in method of calculating "final average monthly salary" under this section and had been advised on the former method of calculation, their expectations that their retirement payment would be calculated under the former method amounted to a contractual right. Where state failed to produce

evidence that violating patrolmen's contractual right to have retirement payments calculated under former method was demanded by a vital state interest or important public purpose, plaintiffs in this case were entitled to summary judgment against state. *Halpin v. Nebraska State Patrolmen's Retirement System*, 211 Neb. 892, 320 N.W.2d 910 (1982).

**81-2027 Retirement benefit; adjusted by increase in cost of living.**

Each retired officer of the Nebraska State Patrol, or surviving beneficiary who is receiving a retirement benefit as of December 31, 1977, shall have such retirement benefits adjusted by the increase in the cost of living, as determined by the difference between the Consumer Price Index for Urban Wage Earners and Clerical Workers from the date his or her retirement benefit commenced and January 1, 1978.

**Source:** Laws 1977, LB 347, § 2; Laws 1979, LB 80, § 108; R.S.Supp.,1980, § 60-452.02.

**81-2027.01 Repealed. Laws 1998, LB 1191, § 85.**

**81-2027.02 Repealed. Laws 1998, LB 1191, § 85.**

**81-2027.03 Benefits; adjustment.**

(1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted so that the purchasing power of the benefit being paid is not less than sixty percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by sixty percent. In any year in which applying the adjustment provided in subsection (2) of this section results in a benefit which would be less than sixty percent of the purchasing power of the initial benefit as calculated above, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year. In all other

years, the adjustment provided under subsection (2) of this section shall be provided. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2) Except as provided in subsection (1) of this section:

(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent; and

(b) Beginning July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) The state shall contribute to the State Patrol Retirement Fund an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2010-11 fiscal year, the annual level dollar payment certified by the board shall equal 3.04888 percent of six million eight hundred ninety-five thousand dollars.

(4) The board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the percentage change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

**Source:** Laws 1996, LB 700, § 14; Laws 1999, LB 674, § 8; Laws 2001, LB 711, § 19; Laws 2004, LB 1097, § 31; Laws 2008, LB1147, § 11.

Operative date July 18, 2008.

**81-2027.04 Repealed. Laws 1999, LB 674, § 12.**

**81-2027.05 Annual benefit adjustment; terms, defined.**

For purposes of this section and sections 81-2027.06 and 81-2027.07:

(1) Eligible retiree means (a) a member or beneficiary who has been receiving a retirement benefit for at least five years, which member had at least twenty-five years of creditable service; (b) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 81-2025; or (c) a beneficiary who has been receiving a death benefit pursuant to section 81-2026 for at least five years, and which member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by section 81-2027.06;

(2) Monthly accrual rate means the eligible retiree's total monthly benefit divided by the number of years of creditable service earned by the retiree or deceased member; and

(3) Total monthly benefit means the total benefit received by an eligible retiree pursuant to the Nebraska State Patrol Retirement Act, previous adjustments made pursuant to section 81-2027.07, or any other provision of Nebraska law which grants a benefit or cost-of-living increase within the act, but total monthly benefit does not include sums received by an eligible retiree from federal sources.

**Source:** Laws 1998, LB 532, § 10.

**81-2027.06 Annual benefit adjustment; minimum accrual rate.**

The minimum accrual rate is thirty dollars until adjusted pursuant to this section. Commencing June 30, 1999, the retirement board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics of the United States Department of Labor from the last adjustment of the minimum accrual rate.

**Source:** Laws 1998, LB 532, § 11; Laws 1999, LB 703, § 17; Laws 2008, LB1147, § 12.

Operative date July 18, 2008.

**81-2027.07 Annual benefit adjustment; calculations.**

(1) Beginning June 30, 1999, and each June 30 thereafter, the retirement board shall determine the number of eligible retirees in the retirement system and shall grant an annual benefit adjustment to each eligible retiree. The annual benefit adjustment shall be calculated by multiplying the eligible retiree's total monthly benefit by the lesser of:

(a)(i) For calculations on June 30, 1999, the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics from June 30, 1998, through June 30, 1999; or

(ii) For calculations on June 30, 2000, and each June 30 thereafter, the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor from the last adjustment of the total monthly benefit of each eligible retiree pursuant to this section through June 30 of the year for which the annual benefit adjustment is being calculated; or

(b)(i) For calculations on June 30, 1999, an amount equal to three percent per annum compounded from June 30, 1998, through June 30, 1999; or

(ii) For calculations on June 30, 2000, and each June 30 thereafter, an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each eligible retiree pursuant to this section through June 30 of the year for which the annual benefit adjustment is being calculated.

(2) Beginning July 1 each year, each eligible retiree shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit, which sum shall be the retiree's adjusted total monthly benefit. Each eligible retiree shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the eligible retiree again qualifies for the annual benefit adjustment, whichever occurs first. Subsequent to the date of the annual benefit adjustment, an eligible retiree shall never

receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(3) The retirement board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section and section 81-2027.06 is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

**Source:** Laws 1998, LB 532, § 12; Laws 1999, LB 703, § 18.

**81-2028 Retirement; disability; exceptions.**

No officer shall receive any disability benefit payments when there remains to his or her credit unused annual leave or sick leave or under any other circumstances if during the period of disability there has been no impairment of his or her compensation.

**Source:** Laws 1947, c. 211, § 13(2), p. 691; R.S.1943, (1978), § 60-455; Laws 1991, LB 549, § 56.

**81-2029 Retirement; disability; proof.**

No disability benefit payments shall be made except upon adequate proof furnished to the system of the existence of such disability, and during the time when any such benefits are being paid, the system shall have the right, at reasonable times, to require the disabled officer to submit proof of the continuance of the disability claimed. Disability is defined to be the complete inability of the officer, for reasons of accident or sickness, to perform the duties of an officer.

**Source:** Laws 1947, c. 211, § 13(3), p. 691; Laws 1969, c. 511, § 9, p. 2097; Laws 1974, LB 1004, § 2; R.S.1943, (1978), § 60-456; Laws 1991, LB 549, § 57.

**81-2030 Retirement; disability; medical examinations; expense.**

The board shall have the right to demand a physical examination of the member by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, chosen by the system and at the expense of the system.

**Source:** Laws 1947, c. 211, § 13(4), p. 691; R.S.1943, (1978), § 60-457; Laws 1997, LB 623, § 39.

**81-2031 Termination of employment; return of contributions, when; rejoining system; deferred annuity.**

(1) Upon termination of employment prior to becoming eligible to retire, as provided in section 81-2025, and for reasons other than death or disability, an officer shall be entitled to receive all payments which have been made by compensation deductions into the State Patrol Retirement Fund plus regular interest. The return of such contributions and interest to such officer shall

preclude such officer from any benefits under the Nebraska State Patrol Retirement Act unless and until such officer is reemployed in such capacity and repays such withdrawals pursuant to section 81-2031.06. If the officer chooses not to repay such withdrawals with interest, the officer shall enter the system as a new member with no prior rights.

(2) In lieu of the benefit described in subsection (1) of this section, the officer may elect to receive a deferred annuity to commence as early as age fifty. If this election is made, the contributions made to the system by the officer may not be withdrawn from the system. The deferred annuity shall be computed as a percentage of the retirement annuity, as computed in subsection (1) of section 81-2026. The percentage shall be:

(a) Zero percent for the first five years of (i) creditable service plus (ii) eligibility and vesting credit;

(b) Twenty percent for each completed year for the next five years of (i) creditable service plus (ii) eligibility and vesting credit; and

(c) One hundred percent after ten completed years of (i) creditable service plus (ii) eligibility and vesting credit.

In the event of the death of any officer during the deferred period, the accumulated value of the officer's contributions at the date of termination plus regular interest to the date of his or her death shall be paid to such officer's beneficiary.

**Source:** Laws 1947, c. 211, § 14, p. 692; Laws 1959, c. 297, § 1, p. 1106; Laws 1969, c. 511, § 10, p. 2097; Laws 1974, LB 905, § 6; Laws 1974, LB 1004, § 3; Laws 1975, LB 55, § 1; Laws 1975, LB 235, § 4; R.S.1943, (1978), § 60-458; Laws 1986, LB 311, § 27; Laws 1989, LB 506, § 17; Laws 1991, LB 549, § 58; Laws 1994, LB 833, § 44; Laws 1994, LB 1306, § 7; Laws 1996, LB 1076, § 34; Laws 1997, LB 624, § 32; Laws 1999, LB 703, § 19; Laws 2001, LB 408, § 23.

**81-2031.01 Retirement system; reemployment; election to repay system; amount; status; exception.**

From January 1, 1991, to June 30, 1991, any person who withdrew his or her accumulated contributions pursuant to subsection (1) of section 81-2031 prior to January 1, 1991, and has again become an employee of the Nebraska State Patrol may elect to repay the retirement system for any number of years of service which he or she accumulated prior to withdrawing his or her accumulated contributions. The amount to be repaid shall not exceed the amount of the withdrawal for the years of service for which the repayment is being made plus the interest which would have accrued on that amount under the retirement system. Any person who repays such amount shall be restored to the same status for the years of service for which repayment is made as he or she had prior to the withdrawal of the accumulated contributions. This section shall not apply to employees of the Nebraska State Patrol retiring prior to January 1, 1991.

**Source:** Laws 1990, LB 1105, § 1.

**81-2031.02 Retirement system; current employee; participation in another governmental plan; how treated.**

For one year after September 9, 1995, any member employed on or before September 9, 1995, may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation.

**Source:** Laws 1995, LB 501, § 9.

**81-2031.03 Direct rollover; terms, defined; distributee; powers; board; duties.**

(1) For purposes of this section and section 81-2031.04:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, and (v) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (iv) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 39; Laws 2002, LB 407, § 51.

**81-2031.04 Retirement system; accept payments and rollovers; limitations; board; duties.**

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 81-2031 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a

qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 40; Laws 2002, LB 407, § 52.

#### **81-2031.05 Retired officer; reemployment; how treated.**

A retired officer of the Nebraska State Patrol who becomes a member of the Nebraska State Patrol shall continue receiving retirement benefits and shall be treated for all purposes of the Nebraska State Patrol Retirement Act as a new member of the system.

**Source:** Laws 1997, LB 624, § 33.

#### **81-2031.06 Termination of employment prior to eligibility to retire; rejoining system; effect.**

An officer who terminates employment prior to becoming eligible to retire and again serves as an officer in the Nebraska State Patrol may elect to repay part or all of the amount he or she had withdrawn as a refund pursuant to section 81-2031 plus the interest that would have accrued on such amount. Payment shall commence prior to termination of employment, shall not be extended more than five years after the date the officer elects to repay his or her refund, and shall be completed prior to termination of employment. Prior service and rights shall be restored in proportion to the amounts repaid, and the prior service and rights of the officer shall be fully restored only if he or she

repays all accumulated withdrawals plus interest which would have accrued on that amount.

**Source:** Laws 2001, LB 408, § 24.

**81-2031.07 Retirement system; accept transfers; limitations; how treated.**

The retirement system may accept as payment for withdrawn amounts made pursuant to the Nebraska State Patrol Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 53.

**81-2032 Retirement system; funds; exemption from legal process; exception.**

All annuities or benefits which any person shall be entitled to receive under sections 81-2014 to 81-2036 shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

**Source:** Laws 1947, c. 211, § 15, p. 692; Laws 1969, c. 511, § 11, p. 2098; R.S.1943, (1978), § 60-459; Laws 1986, LB 311, § 28; Laws 1989, LB 506, § 18; Laws 1994, LB 833, § 45; Laws 1995, LB 574, § 84; Laws 1996, LB 1273, § 29.

**Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

**81-2033 Retirement; total service credit.**

In computing length of creditable service under the Nebraska State Patrol Retirement Act, such service shall include the years of service with the Nebraska State Patrol, permanent force, as established by the law creating the Nebraska State Patrol computed to the nearest one-twelfth year and shall only include such years during which the person was a contributing member of the Nebraska State Patrol Retirement System. Length of creditable service shall also include credit for time served in the armed forces pursuant to section 81-2034. For subsection (2) of section 81-2031 only, service shall also include credit for vesting pursuant to sections 60-1304, 81-2016, and 81-2031.02.

**Source:** Laws 1947, c. 211, § 16, p. 692; Laws 1969, c. 511, § 12, p. 2098; R.S.1943, (1978), § 60-460; Laws 1993, LB 724, § 17; Laws 1995, LB 501, § 10; Laws 1997, LB 624, § 34; Laws 2002, LB 470, § 9.

**81-2034 Retirement; method of crediting for time served in armed forces; effect.**

(1) Any member of the Nebraska State Patrol who, while a member of the Nebraska State Patrol, entered into and served or shall enter into and serve in the armed forces of the United States during a declared emergency, as defined and prescribed under such rules and regulations as the board may adopt, and who, within six months after honorable discharge or honorable separation from active duty, returned or returns to the service of the state and again becomes a member of the Nebraska State Patrol shall be credited, in determining benefits due such member from the State Patrol Retirement Fund, for all the time actually served in the armed forces as if such person had been in the service of the Nebraska State Patrol throughout such declared emergency service in the armed forces.

(2) Under such rules and regulations as the board adopts and promulgates, any member of the Nebraska State Patrol who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. chapter 43, shall be treated as not having incurred a break in service by reason of his or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan. The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

**Source:** Laws 1949, c. 177, § 1, p. 481; Laws 1967, c. 391, § 5, p. 1216; Laws 1971, LB 987, § 15; R.S.1943, (1978), § 60-461; Laws 1991, LB 549, § 59; Laws 1996, LB 847, § 38.

**81-2035 Annuity; adjustment; amount.**

Any annuity paid pursuant to sections 81-2014 to 81-2034 to any officer or surviving spouse qualified to receive such payment shall be adjusted on May 27, 1989, to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement. The adjustment shall be an increase in an amount equal to three percent for each year since the date of such officer's retirement commencing on and after January 1, 1978, until December 31, 1984.

**Source:** Laws 1989, LB 137, § 1.

**81-2036 Annuity; additional adjustment; changes in family unit.**

After the adjustment prescribed in section 81-2035 is made, any annuity paid pursuant to sections 81-2014 to 81-2034 to any officer or surviving spouse qualified to receive such payment shall be adjusted on May 27, 1989, to reflect changes in the cost of living and wage levels which have occurred subsequent to the date of retirement up to an annuity total amount equal to five thousand nine hundred eighty dollars for a one-member family unit. For each additional member of the family unit the amount shall be increased by two thousand forty dollars. The annuity shall be adjusted to reflect any changes in the family unit when the change occurs. A change in the family unit after retirement occurs (1) upon the death of the officer, (2) upon the death of the spouse or a dependent child, (3) upon the birth of a dependent child, (4) upon the divorce of the officer and his or her spouse, (5) when the officer no longer provides support for a dependent child, and (6) when a dependent child becomes nineteen years of age. Each officer or surviving spouse whose annuity is adjusted pursuant to this section shall file an annual report with the retirement system, on a form prescribed by the Public Employees Retirement Board, to verify the size of the

family unit. For purposes of this section, family unit shall include the officer, his or her spouse at the time of retirement, the officer's legal dependent children under nineteen years of age, and the officer's dependent handicapped children.

**Source:** Laws 1989, LB 137, § 2.

**81-2037 Limitation of actions.**

Every claim and demand under sections 81-2014 to 81-2036 and against the retirement system or the board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 36.

**81-2038 False or fraudulent actions; prohibited acts; penalty; denial of benefits.**

Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the officer to recover any benefits already paid on the basis of such information.

**Source:** Laws 1998, LB 1191, § 66.

**81-2039 Retirement system contributions, property, and rights; how treated.**

All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the Nebraska State Patrol Retirement Act.

**Source:** Laws 1998, LB 1191, § 67.

**81-2040 Termination of system or contributions; effect.**

Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 68.

**81-2041 DROP participation authorized; requirements; fees.**

(1) Any member who meets the participation requirements of subsection (2) of this section may participate in DROP. DROP provides that subsequent to attaining normal age and service retirement eligibility, a member may voluntarily choose to participate in DROP upon its adoption which, for purposes of this section, shall be the earlier of September 1, 2008, or the first of the month following a favorable letter determination by the Internal Revenue Service. If

the member chooses to participate in DROP, the member shall be deemed to have retired, but the member may continue in active employment for up to a five-year period. During the DROP period, the member's retirement benefit payments shall be deposited into the DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future retirement benefit payments shall be made directly to the member, and the member shall have access to all funds in the DROP account designated for the benefit of the member.

(2) To participate in the DROP program, a member shall meet the following requirements:

(a) A member shall be eligible to enter DROP at any time subsequent to the date when the member has (i) attained normal retirement age and (ii) completed twenty-five years of service. Members having attained normal retirement age and completed twenty-five years of service on or before the date of adoption of DROP shall be eligible to enter DROP at any future date;

(b) A member who elects to enter DROP shall be entitled to receive regular age and service retirement benefits in accordance with section 81-2026. A member is entitled to remain in DROP for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit DROP at any time during the DROP period. On or before the completion of the DROP period, the member must separate from active employment and exit DROP. During the DROP period, a member's retirement benefit shall be payable to the DROP account vendor designated in the member's name. Amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under section 415 of the Internal Revenue Code;

(c) A member electing to enter DROP shall choose an annuity payment option. After the option is chosen, the member shall not be entitled to any retirement benefit changes, for reasons including, but not limited to, wage increases, promotions, and demotions, except that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be fixed as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. Upon the death of a member during the DROP period, monthly benefits shall be provided as a percentage of the amount of the member's annuity as set forth in subsection (3) of section 81-2026 based upon the annuity benefit calculation made at commencement of the DROP period. In addition, the balance of the DROP account, if any, shall be provided to the beneficiary or beneficiaries of the member or, if no beneficiary is provided, to the estate of the member. Upon the disability of a member during the DROP period, the member shall be deemed to have completed the DROP period, shall begin receiving the annuity benefit as calculated at the commencement of the DROP period, and shall be paid the balance of the DROP account, if any;

(d) No member shall be allowed to continue making the required contributions while the member is enrolled in DROP;

(e) During the DROP period, the Nebraska State Patrol shall not be assessed the amount required under subsection (2) of section 81-2017 nor shall such amount be credited to the State Patrol Retirement Fund;

(f) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP

period thereby ending the member's participation in DROP. If a member has not voluntarily separated from active employment on or before the completion of the DROP period, the member's retirement benefit shall be paid directly to the member thereby ending the member's active employment. The member's DROP account shall consist of accrued retirement benefits and interest on such benefits;

(g) Any member that is enrolled in DROP shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any DROP investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges, or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member shall not be made up by the retirement system but all of the same shall be born by the participating DROP member. The retirement system, the state, the board, and the state investment officer shall not be responsible for any investment results under the DROP agreement. Transfers between investment options shall be in accordance with the rules and regulations of DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for the member's retirement benefit distributions and net investment earnings and losses;

(h) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account; and

(i) Cost-of-living adjustments as provided for in section 81-2027.03 shall not be applied to retirement benefits during the DROP period.

**Source:** Laws 2007, LB324, § 3.

## ARTICLE 21

### STATE ELECTRICAL DIVISION

Section	
81-2101.	Act, how cited.
81-2102.	Terms, defined.
81-2103.	State Electrical Division; created; State Electrical Board; members; duties; qualifications; terms.
81-2104.	State Electrical Board; powers enumerated.
81-2105.	Electrical Division Fund; created; how funded; board; expenses.
81-2106.	Plan, lay out, or supervise certain activities; license required; exceptions.
81-2107.	Electrical contractor license; applicant; qualifications; Class B electrical contractor license and Class B master electrician license; restriction on license.
81-2108.	Wiring or installing; license required; exceptions; lending license prohibited.
81-2109.	Journeyman electrician license; residential journeyman electrician license; qualifications; Class B journeyman electrician license; restriction on license.
81-2110.	Installer; license; rights and privileges.
81-2111.	Repealed. Laws 1993, LB 193, § 35.
81-2112.	Special electrician license; licensee; rights and privileges; qualifications.
81-2112.01.	Repealed. Laws 1993, LB 193, § 35.
81-2112.02.	Fire alarm installer; license; rights and privileges; experience.
81-2113.	Apprentice electrician; registration; supervision.
81-2114.	State Electrical Division; provide training sessions and sites; fee.
81-2115.	License; written examination; when given; examination required to renew license; when.

**§ 81-2101****STATE ADMINISTRATIVE DEPARTMENTS**

## Section

- 81-2116. License; issued upon passing examination and showing satisfactory qualifications.
- 81-2117. Repealed. Laws 1993, LB 193, § 35.
- 81-2117.01. License renewal; continuing education required; instructor and course approval; certificate of attendance.
- 81-2117.02. License; renewal.
- 81-2118. Licenses; expiration; fees.
- 81-2119. Death of licensee; representative may carry on business; how long; insurance required.
- 81-2120. Licenses; issued without examination; reciprocity with other states.
- 81-2121. Act; not applicable to certain situations; enumerated.
- 81-2122. Repealed. Laws 1993, LB 193, § 35.
- 81-2123. Repealed. Laws 1993, LB 193, § 35.
- 81-2124. Electrical installations; subject to inspection.
- 81-2125. State inspection; not applicable in certain political subdivisions; when; electrical inspector; certificate of qualification.
- 81-2126. Request for inspection; when required; fees; failure to file request; procedure.
- 81-2127. Inspection; installation not in compliance with standards; written order to condemn; opportunity to correct noncompliance.
- 81-2128. Condemnation or disconnection order; service.
- 81-2129. Installations; connected; certificate of safe operation; dismissal of condemnation or disconnection order; contents of certificate; transient projects; duty of board.
- 81-2130. Political subdivision inspections; file inspection codes with board; no additional license fee required; powers of political subdivision.
- 81-2131. Repealed. Laws 1993, LB 193, § 35.
- 81-2132. Inspections; not required; when.
- 81-2133. Supplier of electrical energy; liability limited; exception.
- 81-2134. State inspection; procedures.
- 81-2135. State inspection; fees; when due; when not applicable; schedule of fees.
- 81-2136. Inspection; new electrical installation not in compliance with standards; condemnation; when; opportunity to correct.
- 81-2137. Inspection; new electrical installation not in compliance with standards; disconnection; when; opportunity to correct.
- 81-2138. Noncomplying installation; not dangerous; correction order; contents; failure to correct; effect; liability of energy supplier.
- 81-2139. Correction order; countermanded or extended; written request; action on.
- 81-2140. Condemnation, disconnection, and correction orders; forms; service; manner.
- 81-2141. Appeal from condemnation or disconnection order; time; stay of appeal; conditions.
- 81-2142. Appeal; hearing officer; hearing; decision by board; notice; opportunity to present evidence; hearing date.
- 81-2143. Violations, enumerated; penalties.
- 81-2144. Repealed. Laws 1993, LB 193, § 35.
- 81-2145. Repealed. Laws 2003, LB 126, § 16.

**81-2101 Act, how cited.**

Sections 81-2101 to 81-2143 shall be known and may be cited as the State Electrical Act.

**Source:** Laws 1975, LB 525, § 1; R.S.1943, (1976), § 81-571; Laws 1986, LB 379, § 1; Laws 1993, LB 215, § 1; Laws 1993, LB 193, § 1; Laws 2003, LB 126, § 1.

**81-2102 Terms, defined.**

For purposes of the State Electrical Act, unless the context otherwise requires:

(1) Apprentice electrician means any person, other than a licensee, who, as such person's principal occupation, is engaged in learning and assisting in the installation, alteration, and repair of electrical equipment as an employee of a licensee and who is registered with the board. For purposes of this subdivision, persons who are not engaged in the installation, alteration, or repair of electrical wiring and apparatus, either inside or outside buildings, shall not be considered apprentice electricians;

(2) Board means the State Electrical Board;

(3) Class A master electrician means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes and who is licensed by the board;

(4) Class B electrical contractor means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, install, and supervise the installation of wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants and who is licensed by the board;

(5) Class B journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants and who is licensed by the board;

(6) Class B master electrician means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation of wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants and who is licensed by the board;

(7) Commercial installation means an installation intended for commerce, but does not include a residential installation;

(8) Electrical contractor means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, install, and supervise the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes and who is licensed by the board;

(9) Fire alarm installer means any person having the necessary qualifications, training, and experience to plan, lay out, and install electrical wiring, apparatus, and equipment for only those components of fire alarm systems that operate at fifty volts or less and who is licensed by the board;

(10) Industrial installation means an installation intended for use in the manufacture or processing of products involving systematic labor or habitual

employment and includes installations in which agricultural or other products are habitually or customarily processed or stored for others, either by buying or reselling on a fee basis;

(11) Installer means a person who has the necessary qualifications, training, experience, and technical knowledge to properly lay out and install electrical wiring, apparatus, and equipment for major electrical home appliances on the load side of the main service in any municipality which has a population of less than one hundred thousand inhabitants and who is licensed by the board;

(12) Inspector means a person certified as an electrical inspector upon such reasonable conditions as may be adopted by the board. The board may permit more than one class of electrical inspector;

(13) Journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment and to supervise apprentice electricians and who is licensed by the board;

(14) New electrical installation means the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes;

(15) Public-use building or facility means any building or facility designated for public use;

(16) Residential installation means an installation intended for a single-family or two-family residential dwelling or a multi-family residential dwelling not larger than three stories in height;

(17) Residential journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electric wiring, apparatus, and equipment for residential installations and to supervise apprentice electricians and who is licensed by the board;

(18) Routine maintenance means the repair or replacement of existing electrical apparatus and equipment of the same size and type for which no changes in wiring are made; and

(19) Special electrician means a person having the necessary qualifications, training, and experience in wiring or installing special classes of electrical wiring, apparatus, equipment, or installations which shall include irrigation system wiring, well pump wiring, air conditioning and refrigeration installation, and sign installation and who is licensed by the board.

**Source:** Laws 1975, LB 525, § 2; Laws 1978, LB 833, § 2; Laws 1981, LB 67, § 1; R.S.Supp., 1981, § 81-572; Laws 1993, LB 193, § 2; Laws 2003, LB 126, § 2; Laws 2004, LB 914, § 1.

**81-2103 State Electrical Division; created; State Electrical Board; members; duties; qualifications; terms.**

There is hereby established an independent agency to be known as the State Electrical Division which shall be under the administrative and operative control of the executive director of such division. The division shall include a seven-member State Electrical Board appointed by the Governor with the consent of the Legislature. All members of the board shall be residents of the State of Nebraska. The board shall direct the efforts of the executive director and set the policy of the division. One of such members shall be a journeyman electrician, one shall be an electrical contractor or master electrician, one shall be a certified electrical inspector, one shall be a licensed professional electrical

engineer, one shall be a representative of a public power district or rural electric cooperative in the state, one shall be a representative of the municipal electric systems in the state, and one shall be a member of any of such groups. The members of the board shall be appointed for staggered terms of five years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term. Each member of the board shall serve until his or her successor is appointed and qualified. The executive director shall be the executive secretary of the board and shall be responsible for all books, records, and transcripts of proceedings of the board.

**Source:** Laws 1975, LB 525, § 3; Laws 1978, LB 833, § 2; R.S.Supp.,1980, § 81-573; Laws 1982, LB 490, § 1; Laws 1993, LB 193, § 3; Laws 1997, LB 622, § 127; Laws 2003, LB 126, § 3.

**81-2104 State Electrical Board; powers enumerated.**

The board shall have power to:

- (1) Elect its own officers;
- (2) Engage and fix the compensation of such officers, inspectors, and employees as may be required in the performance of its duties;
- (3) Pay such other expenses as may be necessary in the performance of its duties;
- (4) Provide upon request such additional voluntary inspections and reviews as it deems appropriate;
- (5) Adopt, promulgate, and revise rules and regulations necessary to enable it to carry into effect the State Electrical Act. In adopting and promulgating such rules and regulations, the board shall be governed by the minimum standards set forth in the National Electrical Code issued and adopted by the National Fire Protection Association in 2005, Publication Number 70-2005, and amendments to the code adopted as of January 1, 2003, which code and amendments shall be filed in the offices of the Secretary of State and the board and shall be a public record. The board shall adopt and promulgate rules and regulations establishing wiring standards that protect public safety and health and property and that apply to all electrical wiring which is installed subject to the State Electrical Act;
- (6) Revoke, suspend, or refuse to renew any license or registration granted pursuant to the State Electrical Act when the licensee or registrant (a) violates any provision of the National Electrical Code as adopted pursuant to subdivision (5) of this section, the act, or any rule or regulation adopted and promulgated pursuant to the act, (b) fails or refuses to pay any examination, registration, or license renewal fee required by law, (c) is an electrical contractor or master electrician and fails or refuses to provide and keep in force a public liability insurance policy as required by the board, or (d) violates any political subdivision's approved inspection ordinances;
- (7) Order disconnection of power to any electrical installation that is proximately dangerous to health and property;
- (8) Order removal of electrical wiring and apparatus from premises when such wiring and apparatus is proximately dangerous to health and property;
- (9) Investigate, for the purpose of identifying dangerous electrical wiring or violations of the National Electrical Code as adopted pursuant to subdivision

(5) of this section, any death by electrocution that occurs within the State of Nebraska;

(10) Refuse to renew any license granted pursuant to the act when the licensee fails to submit evidence of completing the continuing education requirements under section 81-2117.01;

(11) Provide for the amount and collection of fees for inspection and other services;

(12) Adopt a seal, and the executive secretary shall have the care and custody thereof; and

(13) Enforce the provisions of the National Electrical Code as adopted pursuant to subdivision (5) of this section.

**Source:** Laws 1975, LB 525, § 5; Laws 1978, LB 906, § 1; Laws 1978, LB 833, § 3; Laws 1981, LB 77, § 1; R.S.Supp.,1981, § 81-575; Laws 1984, LB 946, § 1; Laws 1987, LB 69, § 1; Laws 1990, LB 863, § 1; Laws 1993, LB 215, § 2; Laws 1993, LB 193, § 4; Laws 1993, LB 192, § 1; Laws 1996, LB 933, § 1; Laws 1999, LB 91, § 1; Laws 2002, LB 873, § 1; Laws 2003, LB 126, § 4; Laws 2005, LB 201, § 1.

**81-2105 Electrical Division Fund; created; how funded; board; expenses.**

There is hereby created the Electrical Division Fund. All money received under the State Electrical Act shall be remitted to the State Treasurer for credit to the fund. Each member of the board shall be reimbursed for the actual and necessary expenses incurred in the performance of his or her duties pursuant to sections 81-1174 to 81-1177 to be paid out of the fund.

**Source:** Laws 1975, LB 525, § 6; R.S.1943, (1976), § 81-576; Laws 1993, LB 193, § 5.

**81-2106 Plan, lay out, or supervise certain activities; license required; exceptions.**

Except as provided in section 81-2108, 81-2110, or 81-2112, no person shall, for another, plan, lay out, or supervise the installation of wiring, apparatus, or equipment for electrical light, heat, power, and other purposes unless he or she is licensed by the board as a Class B electrical contractor, an electrical contractor, a Class A master electrician, or a Class B master electrician.

**Source:** Laws 1975, LB 525, § 7; Laws 1978, LB 833, § 4; R.S.Supp.,1980, § 81-577; Laws 1993, LB 193, § 6; Laws 2003, LB 126, § 5.

**81-2107 Electrical contractor license; applicant; qualifications; Class B electrical contractor license and Class B master electrician license; restriction on license.**

(1) An applicant for an electrical contractor license shall (a) be a graduate of a four-year electrical course in an accredited college or university, (b) have at least one year's experience, acceptable to the board, as a journeyman electrician, or (c) have at least five years' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for electrical light, heat, and power.

(2) A Class B electrical contractor license and a Class B master electrician license shall be valid only in regard to systems of not over four hundred amperes in capacity in structures used and maintained as residential dwellings but not larger than four-family dwellings located in any municipality which has a population of less than one hundred thousand inhabitants.

**Source:** Laws 1975, LB 525, § 9; Laws 1978, LB 833, § 6; R.S.Supp.,1980, § 81-578; Laws 1993, LB 193, § 7; Laws 2003, LB 126, § 6.

**81-2108 Wiring or installing; license required; exceptions; lending license prohibited.**

(1) Except as provided in subsection (2) of this section or in section 81-2110 or 81-2112, no person shall, for another, wire for or install electrical wiring, apparatus, or equipment unless he or she is licensed by the board as a Class B electrical contractor, an electrical contractor, a Class A master electrician, a Class B master electrician, or a fire alarm installer.

(2) Except as provided in section 81-2106, 81-2110, or 81-2112, no person shall wire for or install electrical wiring, apparatus, or equipment or supervise an apprentice electrician unless such person is licensed as a Class B journeyman electrician, a journeyman electrician, a residential journeyman electrician, or a fire alarm installer and is employed by a Class B electrical contractor, an electrical contractor, a Class A master electrician, a Class B master electrician, or a fire alarm installer.

For purposes of this section, the holder of a fire alarm installer license shall only supervise those apprentices engaged in the installation of fire alarm equipment and apparatus operating at fifty volts or less.

(3) No person licensed under the State Electrical Act may lend his or her license to any person or knowingly permit the use of such license by another.

**Source:** Laws 1975, LB 525, § 9; Laws 1978, LB 833, § 6; R.S.Supp.,1980, § 81-579; Laws 1982, LB 605, § 1; Laws 1993, LB 193, § 8; Laws 2003, LB 126, § 7; Laws 2004, LB 914, § 2.

**81-2109 Journeyman electrician license; residential journeyman electrician license; qualifications; Class B journeyman electrician license; restriction on license.**

(1) An applicant for a journeyman electrician license shall have at least four years' experience, acceptable to the board, in the electrical trade. Registration as an apprentice electrician for those years shall, on the approval of the board, constitute evidence of such experience. The board may by rule or regulation provide for the allowance of one year of experience credit for successful completion of a two-year post-high school electrical course approved by the board.

(2) On and after July 16, 2004, an applicant for a residential journeyman electrician license shall have at least three years' experience, acceptable to the board, in the electrical trade. Registration as an apprentice electrician for those years shall, on the approval of the board, constitute evidence of such experience. The board may by rule or regulation provide for the allowance of one year of experience credit for successful completion of a two-year post-high

school electrical course approved by the board. A residential journeyman electrician license shall be valid only for residential installations.

(3) A Class B journeyman electrician license shall be valid only for electrical systems of not over four hundred amperes in capacity in structures used and maintained as residential dwellings but not larger than four-family dwellings located in any municipality which has a population of less than one hundred thousand inhabitants.

**Source:** Laws 1975, LB 525, § 10; R.S.1943, (1976), § 81-580; Laws 1993, LB 193, § 9; Laws 2004, LB 914, § 3.

**81-2110 Installer; license; rights and privileges.**

Any person holding an installer license may lay out and install electrical wiring, apparatus, and equipment for major electrical home appliances on the load side of the main service in any municipality having a population of less than one hundred thousand inhabitants.

**Source:** Laws 1975, LB 525, § 11; R.S.1943, (1976), § 81-581; Laws 1993, LB 193, § 10.

**81-2111 Repealed. Laws 1993, LB 193, § 35.**

**81-2112 Special electrician license; licensee; rights and privileges; qualifications.**

The board shall by rule or regulation provide for the issuance of special electrician licenses empowering the licensee to engage in a limited class or classes of electrical work, which class or classes shall be specified on the license. Each licensee shall have experience, acceptable to the board, in each such limited class of work for which he is licensed.

**Source:** Laws 1975, LB 525, § 13; R.S.1943, (1976), § 81-583.

**81-2112.01 Repealed. Laws 1993, LB 193, § 35.**

**81-2112.02 Fire alarm installer; license; rights and privileges; experience.**

On and after September 9, 1993, any person licensed as a fire alarm installer may plan, lay out, and install electrical wiring, apparatus, and equipment for only those components of fire alarm systems that operate at fifty volts or less. An applicant for a fire alarm installer license shall have at least two years experience, acceptable to the board, in planning, laying out, and installing fire alarm systems.

**Source:** Laws 1993, LB 193, § 11.

**81-2113 Apprentice electrician; registration; supervision.**

(1) A person may register with the board and pay a fee as provided in section 81-2118 to work as an apprentice electrician. Such registration shall entitle the registrant to act as an apprentice electrician to a Class B electrical contractor, an electrical contractor, a Class B journeyman electrician, a journeyman electrician, a residential journeyman electrician, a Class A master electrician, or a Class B master electrician as provided in subsection (2) of this section.

(2) An apprentice electrician shall do no electrical wiring except under the direct personal on-the-job supervision and control and in the immediate pres-

ence of a licensee under the State Electrical Act. Such supervision shall include both on-the-job training and related classroom training as approved by the board. The licensee may employ or supervise apprentice electricians at a ratio not to exceed three apprentice electricians to one licensee, except that such ratio and the other requirements of this section shall not be applicable to a teacher-student relationship within a classroom of a community college.

For purposes of this section, the direct personal on-the-job supervision and control and in the immediate presence of a licensee shall mean the licensee and the apprentice electrician shall be working at the same project location but shall not require that the licensee and apprentice electrician must be within sight of one another at all times.

(3) An apprentice electrician shall not install, alter, or repair electrical equipment except as provided in this section, and the licensee employing or supervising an apprentice electrician shall not authorize or permit such actions by the apprentice electrician.

**Source:** Laws 1975, LB 525, § 14; Laws 1981, LB 67, § 2; R.S.Supp.,1981, § 81-584; Laws 1993, LB 193, § 12; Laws 2003, LB 126, § 8; Laws 2004, LB 914, § 4.

**81-2114 State Electrical Division; provide training sessions and sites; fee.**

The State Electrical Division may:

(1) Provide training sessions for persons applying for licenses pursuant to the State Electrical Act, which sessions shall be held before each licensing examination is given. The purpose of the training sessions shall be to review electrical theory, current rules, regulations, codes, and laws pertaining to electricians, and other subjects deemed necessary by the division. The Electrical Division Fund shall be utilized in carrying out this section, and the attendance fee for one or more sessions shall be forty dollars; and

(2) Designate six training sites in the state which shall be the most convenient and easily accessible locations in the state for those persons who attend to take the licensing examination and who desire to attend training sessions.

Money collected under this section shall be remitted to the State Treasurer for credit to the Electrical Division Fund.

**Source:** Laws 1975, LB 525, § 15; R.S.1943, (1976), § 81-585; Laws 1993, LB 193, § 13; Laws 2003, LB 126, § 9.

**81-2115 License; written examination; when given; examination required to renew license; when.**

In addition to the education and experience requirements imposed in the State Electrical Act and except as otherwise provided in section 81-2116, each applicant shall, prior to issuance of a license under the act, pass a written examination given by the board to insure his or her competence. Such examination shall contain reasonable questions based upon the then current National Electrical Code and upon electrical theory. When answering questions based upon the National Electrical Code, the applicant may refer to an open copy of such code. Examinations shall be given at least twice yearly. Any licensee

failing to renew his or her license by April 1 after its expiration shall take the examination before he or she is issued a new license.

**Source:** Laws 1975, LB 525, § 16; R.S.1943, (1976), § 81-586; Laws 1982, LB 605, § 2; Laws 1993, LB 193, § 14.

**81-2116 License; issued upon passing examination and showing satisfactory qualifications.**

Any person having been examined and having submitted satisfactory evidence that he or she is qualified to undertake and perform work in his or her trade or skill, to the end that any such work will be safely and properly accomplished and installed in accordance with approved standards, based upon minimum standards adopted by the board pursuant to section 81-2104 for such work, shall be licensed as provided in the State Electrical Act.

**Source:** Laws 1975, LB 525, § 17; R.S.1943, (1976), § 81-587; Laws 1993, LB 193, § 15.

**81-2117 Repealed. Laws 1993, LB 193, § 35.**

**81-2117.01 License renewal; continuing education required; instructor and course approval; certificate of attendance.**

(1) In order to renew a license issued under the State Electrical Act, the licensee shall be required to complete twelve contact hours of continuing education by January 1, 1995, for renewal on such date and twelve contact hours by January 1 of each odd-numbered year thereafter. The continuing education courses shall be approved by the board and may consist of training programs, courses, and seminars by the State Electrical Division or public or private schools, organizations, or associations. The contact hours shall include a minimum of six contact hours studying the National Electrical Code described in section 81-2104, and the remaining contact hours may include study of electrical circuit theory, blueprint reading, transformer and motor theory, electrical circuits and devices, control systems, programmable controllers, and microcomputers or any other study of electrical-related material that is approved by the board. Any additional hours studying the National Electrical Code shall be acceptable. For purposes of this section, a contact hour shall mean fifty minutes of classroom attendance at an approved course under a qualified instructor approved by the board.

(2) An application for approval of the instructor and course offering shall be submitted annually on a form provided by the board. The approval by the board of the application shall be valid for one calendar year from the date of approval and shall include the following information:

- (a) Name of the sponsoring organization or school, if any, the address of such organization or school, and the name of the contact person;
- (b) The instructor's name, address, and telephone number;
- (c) The title of the course offering;
- (d) A description of all materials to be distributed to the participants;
- (e) The date and exact location of each presentation of the course offering;
- (f) The duration and time of the offering;

(g) A detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment;

(h) The procedure for measuring attendance; and

(i) A description of the faculty, including name, background, and practical or teaching experience. A complete resume may be furnished. Any application for approval of the instructor and course offering that is rejected shall be returned to the applicant with specific reasons for such rejection and stating what is needed for approval.

(3) If a continuing education course is approved, the licensee shall retain the attendance certificate and attach it to the application for renewal of his or her license at the time of renewal. The licensee shall have the responsibility for record keeping and providing proof of attendance at continuing education courses.

(4) The instructor of each course shall provide an individual certificate of attendance to each licensee who attends ninety percent or more of the classroom hours. A certificate of attendance shall not be issued to a licensee who is absent for more than ten percent of the classroom hours. The certificate shall contain the licensee's name and license number, the course title, the date and location of the course, the number of credit hours, and the signature of the instructor.

**Source:** Laws 1993, LB 193, § 16; Laws 1993, LB 215, § 3.

**81-2117.02 License; renewal.**

(1) No license as a Class A master electrician, Class B master electrician, Class B electrical contractor, Class B journeyman electrician, or installer shall be issued on or after September 9, 1993, but such licenses may be renewed as provided in this section.

(2) A person licensed as a Class A master electrician, a Class B master electrician, a Class B electrical contractor, a Class B journeyman electrician, an installer, or a special electrician on September 9, 1993, may renew such license on or after such date upon presentation of documentary evidence of successful completion of the requisite hours of continuing education courses under section 81-2117.01 and payment of the fee for renewal provided by section 81-2118.

**Source:** Laws 1993, LB 193, § 17; Laws 2003, LB 126, § 10.

**81-2118 Licenses; expiration; fees.**

All licenses issued under the State Electrical Act shall expire on December 31 of each even-numbered year. All license applications shall include the applicant's social security number. The board shall establish the fees to be payable for examination, issuance, and renewal in amounts not to exceed:

(1) For examination:

(a) Electrical contractor, one hundred twenty-five dollars;

(b) Journeyman electrician, sixty dollars;

(c) Residential journeyman electrician, sixty dollars; and

(d) Fire alarm installer, sixty dollars;

(2) For each year of the two-year license period for issuance and renewal:

- (a) Electrical contractor, one hundred twenty-five dollars; and
- (b) Journeyman electrician, residential journeyman electrician, fire alarm installer, or special electrician, twenty-five dollars;
- (3) For each year of the two-year license period for registration as an apprentice electrician, twenty dollars; and
- (4) For renewal on or after September 9, 1993, of the following licenses issued prior to such date for each year of the two-year license period:
  - (a) Class B electrical contractor, one hundred twenty-five dollars;
  - (b) Class A master electrician, one hundred twenty-five dollars;
  - (c) Class B master electrician, one hundred twenty-five dollars; and
  - (d) Class B journeyman electrician, installer, or special electrician, twenty-five dollars.

The holder of an expired license may renew the license for a period of three months from the date of expiration upon payment of the license fee plus ten percent of the renewal fee for each month or portion thereof past the expiration date. All holders of licenses expired for more than three months shall apply for a new license.

**Source:** Laws 1975, LB 525, § 19; Laws 1978, LB 833, § 7; R.S.Supp.,1980, § 81-589; Laws 1984, LB 841, § 1; Laws 1993, LB 193, § 18; Laws 1997, LB 752, § 229; Laws 2003, LB 126, § 11; Laws 2004, LB 914, § 5.

**81-2119 Death of licensee; representative may carry on business; how long; insurance required.**

Upon the death of an electrical contractor, a Class A master electrician, a Class B electrical contractor, a Class B master electrician, or a fire alarm installer, the board may permit his or her representative to carry on the business of the decedent for a period not to exceed six months for the purpose of completing work under contract to comply with the State Electrical Act. Such representative shall furnish all public liability and property damage insurance required by the board.

**Source:** Laws 1975, LB 525, § 20; Laws 1978, LB 833, § 8; R.S.Supp.,1980, § 81-590; Laws 1993, LB 193, § 19; Laws 2003, LB 126, § 12.

**81-2120 Licenses; issued without examination; reciprocity with other states.**

To the extent that any other state which provides for the licensing of electricians provides for similar action, the board may grant licenses, without examination, of the same grade and class to an electrician who has been licensed by such other state for at least one year, upon payment by the applicant of the required fee, and upon the board being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of similar licenses in Nebraska.

**Source:** Laws 1975, LB 525, § 21; R.S.1943, (1976), § 81-591.

**81-2121 Act; not applicable to certain situations; enumerated.**

Nothing in the State Electrical Act shall be construed to:

(1) Require employees of municipal corporations, public power districts, public power and irrigation districts, electric membership or cooperative associations, public utility corporations, railroads, telephone or telegraph companies, or commercial or industrial companies performing manufacturing, installation, and repair work for such employer to hold licenses while acting within the scope of their employment;

(2) Require any person doing work for which a license would otherwise be required under the act to hold a license issued under the act if he or she is the holder of a valid license issued by any city or other political subdivision, so long as he or she makes electrical installations only in the jurisdictional limits of such city or political subdivision and such license issued by the city or political subdivision meets the requirements of the act;

(3) Cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, moving walks, dumbwaiters, stagelifts, manlifts, or appurtenances thereto beyond the terminals of the controllers. The licensing of elevator contractors or constructors shall not be considered a part of the licensing requirements of the act;

(4) Require a license of any person who engages any electrical appliance where approved electrical outlets are already installed;

(5) Prohibit an owner of property from performing work on his or her principal residence, if such residence is not larger than a single-family dwelling, or farm property, excluding commercial or industrial installations or installations in public-use buildings or facilities, or require such owner to be licensed under the act;

(6) Require that any person be a member of a labor union in order to be licensed; or

(7) Prohibit a pump installation contractor or pump installation supervisor credentialed under the Water Well Standards and Contractors' Practice Act from wiring pumps and pumping equipment at a water well location to the first control.

**Source:** Laws 1975, LB 525, § 22; Laws 1978, LB 833, § 9; Laws 1981, LB 67, § 3; R.S.Supp., 1981, § 81-592; Laws 1986, LB 379, § 2; Laws 1993, LB 193, § 20; Laws 2004, LB 914, § 6; Laws 2006, LB 508, § 11; Laws 2007, LB463, § 1314.

**Cross References**

Water Well Standards and Contractors' Practice Act, see section 46-1201.

**81-2122 Repealed. Laws 1993, LB 193, § 35.**

**81-2123 Repealed. Laws 1993, LB 193, § 35.**

**81-2124 Electrical installations; subject to inspection.**

(1) All new electrical installations for commercial or industrial applications, including installations both inside and outside of the buildings, and for public-use buildings and facilities and any installation at the request of the owner shall be subject to the inspection and enforcement provisions of the State Electrical Act.

(2) All new electrical installations for residential applications in excess of single-family residential applications shall be subject to the inspection and enforcement provisions of the act.

(3) All new electrical installations for single-family residential applications requiring new electrical service equipment shall be subject to the inspection and enforcement provisions of the act.

(4) Existing electrical installations observed during inspection which constitute an electrical hazard shall be subject to the act. Existing installations shall not be deemed to constitute an electrical hazard if the wiring when originally installed was installed in accordance with the electrical code in force at the time of installation and has been maintained in that condition.

**Source:** Laws 1975, LB 525, § 24; R.S.1943, (1976), § 81-594; Laws 1993, LB 193, § 21; Laws 2004, LB 914, § 7.

**81-2125 State inspection; not applicable in certain political subdivisions; when; electrical inspector; certificate of qualification.**

(1) State inspection shall not apply within the jurisdiction of any county, city, or village which provides by resolution or ordinance standards of electrical wiring and its installation that are not less than those prescribed by the board or by the State Electrical Act and which further provides by resolution or ordinance for the inspection of electrical installations within the limits of such subdivision by a certified electrical inspector. No person other than the holder of an electrical inspector's certificate of qualification shall be appointed to act as electrical inspector and to enforce the act as electrical inspector and to enforce the act or any applicable resolution or ordinance within his or her jurisdiction. A copy of the certificate of each electrical inspector shall be provided to the board by the political subdivision issuing the certificate.

(2) State inspection shall not apply to routine maintenance.

**Source:** Laws 1975, LB 525, § 25; R.S.1943, (1976), § 81-595; Laws 1993, LB 193, § 22.

**81-2126 Request for inspection; when required; fees; failure to file request; procedure.**

At or before commencement of any installation required to be inspected by the board, the licensee or owner making such installation shall submit to the board a request for inspection, on a form prescribed by the board, together with a supervisory fee of fifty cents and the inspection fees required for such installation. If the board becomes aware that a person has failed to file a necessary request for inspection, the board shall send to such person a written notification by certified mail to file such request within fourteen days. Any person filing a late request for inspection shall pay a delinquent fee of fifty dollars. Failure to file such request within fourteen days shall result in submission of the matter to the county attorney's office for action pursuant to section 81-2143.

**Source:** Laws 1975, LB 525, § 26; Laws 1978, LB 833, § 11; R.S.Supp.,1980, § 81-596; Laws 1982, LB 605, § 3; Laws 1993, LB 193, § 23.

**81-2127 Inspection; installation not in compliance with standards; written order to condemn; opportunity to correct noncompliance.**

If the inspector finds that any installation or portion of an installation is not in compliance with accepted standards of construction for safety to health and

property, based upon minimum standards set forth in the local electrical code or National Electrical Code, he or she shall by written order condemn the installation or noncomplying portion or order service to such installation disconnected and shall send a copy of such order to the board and the supplier involved. If the installation or the noncomplying part is such as to seriously and proximately endanger human health and property, the order of the inspector when approved by his or her superior shall require immediate condemnation and disconnection by the applicant. In all other cases, the order of the inspector shall establish a reasonable period of time for the installation to be brought into compliance with accepted standards of construction for safety to health and property prior to the effective time established in such order for condemnation or disconnection.

**Source:** Laws 1975, LB 525, § 27; R.S.1943, (1976), § 81-597; Laws 1993, LB 193, § 24.

**81-2128 Condemnation or disconnection order; service.**

A copy of each condemnation or disconnection order shall be served personally or by United States mail upon the property owner at his or her last-known address, the licensee making the installation, and such other persons as the board by rule or regulation may direct.

**Source:** Laws 1975, LB 525, § 28; Laws 1978, LB 833, § 12; R.S.Supp.,1980, § 81-598; Laws 1993, LB 193, § 25.

**81-2129 Installations; connected; certificate of safe operation; dismissal of condemnation or disconnection order; contents of certificate; transient projects; duty of board.**

No electrical installation subject to inspection by the board shall be newly connected or reconnected for use until there is filed with the electrical utility supplying power a certificate of the property owner or licensed electrician directing the work that inspection has been requested and that the conditions of the installation are safe for energization. In all cases when an order of condemnation or disconnection has been issued against the installation or any part thereof, prior to connection or reconnection there shall also first be filed with the electrical utility supplying the power a copy of an order of the inspector or the board dismissing such prior order of condemnation or disconnection or approving the installation as being in compliance with accepted standards of construction for safety to life and property, based upon minimum standards set forth in the National Electrical Code. Any supplier may refuse service without liability for such refusal until such conditions have been met. With respect to transient projects, the certificate shall also contain a certification that the request for inspection has been or will be filed with the board so as to be received by it at least five days prior to the date and time energization of the installation by the utility is to occur, and that the request for inspection states such date and time, and it shall be the responsibility of the board to have inspection made of such transient project prior to the date and time at which the request states energization is to occur.

**Source:** Laws 1975, LB 525, § 29; R.S.1943, (1976), § 81-599.

**81-2130 Political subdivision inspections; file inspection codes with board; no additional license fee required; powers of political subdivision.**

Any political subdivision may make provision for inspection of electrical installations within its jurisdiction, in which case it shall keep on file with the board copies of its current inspection ordinances or resolutions and codes. No political subdivision shall require any individual, partnership, limited liability company, corporation, or other business association holding a license from the board to (1) pay any license fee or (2) take any examination if the person holds a current license issued by the board which is of a classification equal to or greater than the classification needed to do the work proposed. Any such political subdivision may provide a requirement that each individual, partnership, limited liability company, corporation, railroad, or other business association doing electrical work within the jurisdiction of such political subdivision have on file with the political subdivision a copy of the current license issued by the board or such other evidence of such license as may be provided by the board.

**Source:** Laws 1975, LB 525, § 30; R.S.1943, (1976), § 81-5,100; Laws 1982, LB 605, § 4; Laws 1993, LB 121, § 546.

**81-2131 Repealed. Laws 1993, LB 193, § 35.**

**81-2132 Inspections; not required; when.**

Nothing in the State Electrical Act shall be construed to require the work of employees of municipal corporations, public power districts, public power and irrigation districts, railroads, electric membership or cooperative associations, public utility corporations, or telephone or telegraph systems to be inspected while acting within the scope of their employment.

**Source:** Laws 1975, LB 525, § 32; R.S.1943, (1976), § 81-5,102; Laws 1993, LB 193, § 26.

**81-2133 Supplier of electrical energy; liability limited; exception.**

Upon inspection and approval by any certified inspector, all liability upon any supplier of electrical service for subsequent damage or loss arising from any installation shall be terminated, except for any acts of gross negligence by such supplier.

**Source:** Laws 1975, LB 525, § 33; R.S.1943, (1976), § 81-5,103.

**81-2134 State inspection; procedures.**

(1) As to state inspections:

(a) At or before commencement of any electrical installation which is required by law to be inspected, the person responsible for the installation shall forward a request for inspection to the board completed in the manner prescribed by the board; and

(b) On installations requiring more than six months in the process of construction and in excess of three hundred dollars total inspection fees, the persons responsible for the installation may, after a minimum filing fee of one hundred dollars, pay a prorated fee for each month and submit it with an order for payment initiated by the electrical inspector.

(2) Where wiring is to be concealed, the inspector must be notified within reasonable time to complete a rough-in inspection prior to concealment, exclusive of Saturdays, Sundays, and holidays. If wiring is concealed before

rough-in inspection without adequate notice having been given to the inspector, the person responsible for having enclosed the wiring shall be responsible for all costs resulting from uncovering and replacing the cover material.

(3) Inspections shall be made within one week of the appropriate request. When necessary, circuits may be energized by the authorized installer prior to inspection but the installation shall remain subject to condemnation and disconnection.

**Source:** Laws 1975, LB 525, § 34; R.S.1943, (1976), § 81-5,104.

**81-2135 State inspection; fees; when due; when not applicable; schedule of fees.**

(1) All state electrical inspection fees shall be due and payable to the board at or before commencement of the installation and shall be forwarded with the request for inspection. Inspection fees provided in this section shall not apply within the jurisdiction of any county, city, or village if the county, city, or village has adopted an ordinance or resolution as set forth in the State Electrical Act.

(2) The board shall establish the fees for inspections in amounts not to exceed:

(a) Minimum fee for each separate inspection of an installation, replacement, alteration, or repair, twenty-five dollars;

(b) Services, change of services, temporary services, additions, alterations, or repairs on either primary or secondary services as follows:

(i) Zero to one hundred ampere capacity, twenty-five dollars plus five dollars per branch circuit or feeder;

(ii) One hundred one to two hundred ampere capacity, thirty-five dollars plus five dollars per branch circuit or feeder; and

(iii) For each additional one hundred ampere capacity or fraction thereof, twenty dollars plus five dollars per branch circuit or feeder;

(c) For field irrigation system inspections, sixty dollars for each unit inspected; and

(d) The first reinspection required as a result of a correction order, fifty dollars; a second reinspection required as a result of noncompliance with the same correction order, seventy-five dollars; and subsequent reinspections associated with the same correction order, one hundred dollars for each reinspection.

(3) When an inspection is requested by an owner, the minimum fee shall be thirty dollars plus five dollars per branch circuit or feeder. The fee for fire and accident inspections shall be computed at the rate of forty-seven dollars per hour, and mileage and other expenses shall be reimbursed as provided in section 81-1176.

**Source:** Laws 1975, LB 525, § 35; Laws 1978, LB 833, § 13; Laws 1980, LB 957, § 1; R.S.Supp.,1980, § 81-5,105; Laws 1984, LB 841, § 2; Laws 1993, LB 193, § 27; Laws 2003, LB 126, § 13.

**81-2136 Inspection; new electrical installation not in compliance with standards; condemnation; when; opportunity to correct.**

When an electrical inspector finds that a new electrical installation or part of a new electrical installation that is not energized is not in compliance with accepted standards of construction, based upon minimum standards adopted by the board pursuant to section 81-2104, he or she shall, if the installation or noncomplying part is such as to seriously and proximately endanger human health and property if energized, order with the approval of his or her superior immediate condemnation of the installation or noncomplying part. When the person responsible for making the installation so condemned is notified, he or she shall promptly proceed to make the corrections cited in the condemnation order.

**Source:** Laws 1975, LB 525, § 36; R.S.1943, (1976), § 81-5,106; Laws 1993, LB 193, § 28.

**81-2137 Inspection; new electrical installation not in compliance with standards; disconnection; when; opportunity to correct.**

If the electrical inspector finds that a new electrical installation or part of a new electrical installation that is energized is not in compliance with accepted standards of construction, he or she shall, if the installation or the noncomplying part is such as to seriously and proximately endanger human health and property, order immediate disconnection of the installation or noncomplying part. When the person responsible for making the installation so ordered disconnected is notified, he or she shall promptly proceed to make the corrections cited in the order.

**Source:** Laws 1975, LB 525, § 37; R.S.1943, (1976), § 81-5,107; Laws 1993, LB 193, § 29.

**81-2138 Noncomplying installation; not dangerous; correction order; contents; failure to correct; effect; liability of energy supplier.**

When a noncomplying installation or part thereof, whether energized or not, is not proximately dangerous to human health and property, the inspector shall issue a correction order, ordering the owner or licensee under the State Electrical Act to make the installation comply with accepted standards of construction for safety to health and property, based upon minimum standards adopted by the board pursuant to section 81-2104, noting specifically what changes are required. The order shall specify a date, not less than ten nor more than seventeen calendar days from the date of the order, when a final inspection shall be made. If at the time of the final inspection the installation has not been brought into compliance, a condemnation or disconnection order may be issued by the inspector with the approval of his or her superior. When the installation is brought into compliance to the satisfaction of the inspector, such correction order shall be immediately countermanded. Any supplier of electrical service complying with any order of an electrical inspector shall be relieved of all liability in cases of subsequent damage or loss arising from any cause, except acts of gross negligence by such supplier.

**Source:** Laws 1975, LB 525, § 38; R.S.1943, (1976), § 81-5,108; Laws 1993, LB 193, § 30.

**81-2139 Correction order; countermanded or extended; written request; action on.**

A correction order of an inspector properly issued may be countermanded or extended by the inspector or his supervisor. Any interested party may demand that an outstanding order be countermanded or extended. Such demand shall be in writing and shall be addressed to the board. If the request to countermand an order is rejected it shall be done so in writing within ten days.

**Source:** Laws 1975, LB 525, § 39; R.S.1943, (1976), § 81-5,109.

**81-2140 Condemnation, disconnection, and correction orders; forms; service; manner.**

(1) Condemnation, disconnection, and correction orders shall be issued on forms prescribed by the board.

(2) A correction order made pursuant to section 81-2138 shall be served personally or by United States mail only upon the licensee making the installation or the property owner. All other orders shall be served personally or by United States mail upon the property owner and the licensee making the installation.

(3) The power supplier shall be served with a copy of any order which requires immediate disconnection or prohibits energizing an installation.

(4) Service by United States mail is complete upon mailing, but three days shall be added to the prescribed time whenever the party served is required to do some act or entitled to respond.

**Source:** Laws 1975, LB 525, § 40; Laws 1978, LB 833, § 14; R.S.Supp.,1980, § 81-5,110; Laws 1993, LB 193, § 31.

**81-2141 Appeal from condemnation or disconnection order; time; stay of appeal; conditions.**

(1) Any person aggrieved by a condemnation or disconnection order issued may appeal from the order by filing a written notice of appeal with the board within ten days after the date the order was served upon the owner or within ten days after the order was filed with the board, whichever is later.

(2) Upon receipt of the notice of appeal from a condemnation or disconnection order because the electrical installation is proximately dangerous to health and property, the order appealed from shall not be stayed unless countermanded by the board.

(3) Upon receipt of notice of appeal from a condemnation or disconnection order because the electrical installation is not in compliance with accepted standards of construction for safety to health and property, the order appealed from shall be stayed until final decision of the board and the board shall notify the property owner and the Class B electrical contractor, electrical contractor, Class A master electrician, Class B master electrician, fire alarm installer, or special electrician making the installation. The power supplier shall also be notified in those instances in which the order has been served on such supplier.

**Source:** Laws 1975, LB 525, § 41; Laws 1978, LB 833, § 15; R.S.Supp.,1980, § 81-5,111; Laws 1993, LB 193, § 32; Laws 2003, LB 126, § 14.

**81-2142 Appeal; hearing officer; hearing; decision by board; notice; opportunity to present evidence; hearing date.**

(1) Upon receipt of a notice of appeal, the chairman or executive secretary of the board may designate a hearing officer from among the board members to hear the appeal or may set the matter for hearing before the full board at its next regular meeting. A majority of the board shall make the decision.

(2) Upon receiving the notice of appeal, the board shall notify all persons served with the order appealed from. Such persons may join in the hearing and give testimony in their own behalf. The board shall set the hearing date on a date not more than fourteen days after receipt of the notice of appeal unless otherwise agreed by the interested parties and the board.

**Source:** Laws 1975, LB 525, § 42; R.S.1943, (1976), § 81-5,112.

**81-2143 Violations, enumerated; penalties.**

It shall be a Class I misdemeanor knowingly and willfully to commit or to order, instruct, or direct another to commit any of the following acts:

(1) To make a false statement in any license application, request for inspection, certificate, or other lawfully authorized or required form or statement provided by the State Electrical Act;

(2) To perform electrical work for another without a proper license for such work;

(3) To fail to file a request for inspection when required;

(4) To interfere with or refuse entry to an inspector lawfully engaged in the performance of his or her duties; or

(5) To fail or neglect to comply with the act or any lawful rule, regulation, or order of the board.

**Source:** Laws 1975, LB 525, § 43; Laws 1977, LB 39, § 292; R.S.Supp.,1980, § 81-5,113; Laws 1993, LB 193, § 33.

**81-2144 Repealed. Laws 1993, LB 193, § 35.**

**81-2145 Repealed. Laws 2003, LB 126, § 16.**

**ARTICLE 22**

**AGING SERVICES**

(a) NEBRASKA COMMUNITY AGING SERVICES ACT

Section	
81-2201.	Act, how cited.
81-2202.	Legislative findings.
81-2203.	Legislative intent.
81-2204.	Definitions, where found.
81-2205.	Committee, defined.
81-2206.	Department, defined.
81-2207.	Repealed. Laws 2007, LB 296, § 815.
81-2208.	Area agency on aging, defined.
81-2209.	Area program plan, defined.
81-2210.	Community aging services, defined.
81-2211.	Senior service center, defined.
81-2211.01.	Greatest economic need, defined.
81-2211.02.	Greatest social need, defined.
81-2211.03.	Older individual, defined.
81-2212.	Committee; advise department; areas enumerated; serve as appeal panel.
81-2213.	Department; powers and duties relating to aging.

## AGING SERVICES

- Section
- 81-2214. Repealed. Laws 1996, LB 1044, § 985.
- 81-2214.01. Repealed. Laws 1992, LB 677, § 35.
- 81-2214.02. Records and information; disclosure prohibited; exceptions.
- 81-2215. Area agency on aging; department designate.
- 81-2216. Area agency on aging; designation by department.
- 81-2217. Area agency on aging; department; duties prior to designation.
- 81-2218. Area agency on aging; governing unit; duties.
- 81-2219. Area agencies on aging; chief executive officer and staff; qualifications; personnel policies.
- 81-2220. Area agency on aging; duties.
- 81-2221. Area plan and budget; contents.
- 81-2222. Funding eligibility; activities and services enumerated.
- 81-2223. Services; eligibility; determination.
- 81-2224. Area agency on aging; reimbursement for costs; how made.
- 81-2225. Reimbursement for costs; qualification.
- 81-2225.01. Intrastate funding formula; department; duties.
- 81-2226. Area agency on aging; malfeasance; effect.
- 81-2227. Department; submit budget.
- 81-2228. Area agency on aging; maintain local tax expenditures.
- (b) CARE MANAGEMENT SERVICES
- 81-2229. Legislative intent.
- 81-2230. Purpose of sections.
- 81-2231. Care management units; certification; standards.
- 81-2232. Area agency on aging; prepare plan; procedure.
- 81-2233. Department; report.
- 81-2234. Care management unit; fee scale; reimbursement.
- 81-2235. Care management unit; reimbursement by department.
- 81-2236. Repealed. Laws 1996, LB 1044, § 985.
- (c) LONG-TERM CARE OMBUDSMAN
- 81-2237. Act, how cited.
- 81-2238. Definitions, where found.
- 81-2239. Department, defined.
- 81-2240. Repealed. Laws 1996, LB 1044, § 985.
- 81-2241. Repealed. Laws 2007, LB 296, § 815.
- 81-2242. Local long-term care ombudsman program, defined.
- 81-2243. Long-term care facility, defined.
- 81-2244. Office, defined.
- 81-2245. Older Americans Act, defined.
- 81-2246. Older individual, defined.
- 81-2247. Ombudsman advocate, defined.
- 81-2248. State long-term care ombudsman, defined.
- 81-2249. Office; created; state long-term care ombudsman; appointed.
- 81-2250. Long-term care ombudsman program; established; contents.
- 81-2251. Rules and regulations; state long-term care ombudsman; qualifications.
- 81-2252. Local long-term care ombudsman programs; designation; provisional status.
- 81-2253. Staff training requirements; ombudsman advocate certification; required.
- 81-2254. Office; investigations; procedure.
- 81-2255. Abuse, neglect, or exploitation; referral required; procedure.
- 81-2256. Long-term care facility; notice required; form.
- 81-2257. Office; access to governmental records.
- 81-2258. Office; access to medical and personal records; liability for disclosure; confidentiality.
- 81-2259. State long-term care ombudsman and state ombudsman advocate; access to patient, resident, or client.
- 81-2260. Complaints or investigations; confidentiality; exceptions.
- 81-2261. Department; duties.
- 81-2262. Local long-term care ombudsman program and certified individual; treatment.

§ 81-2201

STATE ADMINISTRATIVE DEPARTMENTS

Section

- 81-2263. State long-term care ombudsman and ombudsman advocate; immunity from liability; legal counsel.
- 81-2264. Interference with lawful actions; institution of certain proceedings; prohibited.

(d) PREADMISSION SCREENING

- 81-2265. Legislative intent.
- 81-2266. Repealed. Laws 2000, LB 888, § 1.
- 81-2267. Evaluation of pilot project.
- 81-2268. Medicaid waiver funds; use authorized.
- 81-2269. Statewide project; establishment.
- 81-2270. Purchase of services with state funds; sliding-fee scale.
- 81-2271. Rules and regulations.

(e) DEPARTMENT ON AGING CASH FUND

- 81-2272. Repealed. Laws 1996, LB 1044, § 985.

(f) NEBRASKA SENIOR COMPANION VOLUNTEER PROGRAM ACT

- 81-2273. Act, how cited.
- 81-2274. Purpose of act.
- 81-2275. Terms, defined.
- 81-2276. Nebraska Senior Companion Volunteer Program; established.
- 81-2277. Direct service contractor; powers and duties.
- 81-2278. Nebraska Senior Companion Volunteer Program; eligible recipients.
- 81-2279. Senior companion volunteers; benefits.
- 81-2280. Senior companion volunteers; assignment restrictions.
- 81-2281. Grants; amount; application; duration.
- 81-2282. Grantee; reports.
- 81-2283. Rules and regulations.

(a) NEBRASKA COMMUNITY AGING SERVICES ACT

**81-2201 Act, how cited.**

Sections 81-2201 to 81-2228 shall be known and may be cited as the Nebraska Community Aging Services Act.

**Source:** Laws 1982, LB 404, § 1; Laws 1991, LB 58, § 3.

**81-2202 Legislative findings.**

The Legislature hereby finds and declares:

(1) That in many urban and rural areas of the state numerous older individuals are without access to community aging services which strengthen and support a self-reliant, independent family home life in times of personal crisis or advanced age;

(2) That this deficiency in program coverage causes many older individuals to forfeit their independent living arrangements for more dependent and sometimes inappropriate institutional living;

(3) That this deficiency has resulted in disproportionate expenditures of both private and public funds for institutionally based care for the state's older individuals;

(4) That the known future increase in the number and proportion of the state's older individuals will require increased use of the natural care system of family, friends, and neighbors and of the strengths and experience of older individuals for their own self-sufficiency;

(5) That older individuals are healthier, happier, and better served living in their own homes and neighborhoods; that support and care is best given by family, friends, or neighbors; that community-based aging services through senior centers and local organizations can serve, supplement, and bolster family living; and that greater state and other public expenditures for inappropriate care can be avoided by investment in preventive community aging services;

(6) That older individuals of this state are entitled to the same opportunities as others for full enjoyment of and maximum participation in their communities' civic, social, and employment activities and in the personal choice and management of their own lives; and

(7) That it is in the public interest that community aging services which support the continued independence and self-sufficiency of older individuals be available in all areas of the state.

**Source:** Laws 1982, LB 404, § 2; Laws 1991, LB 58, § 4.

**81-2203 Legislative intent.**

The Nebraska Community Aging Services Act is intended to (1) define the state's long-term care policy and program for older individuals in all areas of the state, (2) define and recognize a system for planning, administering, and delivering such program, (3) provide for the coordination and integration of all community activities and services into a comprehensive, coordinated program, and (4) provide authority for state funding of such program.

**Source:** Laws 1982, LB 404, § 3; Laws 1991, LB 58, § 5.

**81-2204 Definitions, where found.**

For purposes of the Nebraska Community Aging Services Act, unless the context otherwise requires, the definitions found in sections 81-2205 to 81-2211.03 shall be used.

**Source:** Laws 1982, LB 404, § 4; Laws 1991, LB 58, § 6.

**81-2205 Committee, defined.**

Committee shall mean the Division of Medicaid and Long-Term Care Advisory Committee on Aging.

**Source:** Laws 1982, LB 404, § 5; Laws 1996, LB 1044, § 870; Laws 2007, LB296, § 762.

**Cross References**

Division of Medicaid and Long-Term Care Advisory Committee on Aging, created, see section 68-1101.

**81-2206 Department, defined.**

Department shall mean the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

**Source:** Laws 1982, LB 404, § 6; Laws 1996, LB 1044, § 871; Laws 2007, LB296, § 763.

**81-2207 Repealed. Laws 2007, LB 296, § 815.**

**81-2208 Area agency on aging, defined.**

Area agency on aging shall mean the agency formed or eligible pursuant to the Nebraska Community Aging Services Act which is designated by the department as responsible for the administration of the area program plan in each planning-and-service area.

**Source:** Laws 1982, LB 404, § 8; Laws 1991, LB 58, § 8.

**81-2209 Area program plan, defined.**

Area program plan shall mean the document submitted to the department by an area agency on aging in order to receive funds under the Nebraska Community Aging Services Act and under the Older Americans Act, as now or hereafter amended, which details the area agency on aging's plan for a comprehensive, coordinated program of community aging services for such area. The area program plan shall be designed to address the needs of older individuals with the greatest economic need and the greatest social need.

**Source:** Laws 1982, LB 404, § 9; Laws 1991, LB 58, § 9.

**81-2210 Community aging services, defined.**

Community aging services means those activities and services which fulfill the goals of the Nebraska Community Aging Services Act, which are necessary to promote, restore, or support self-sufficiency and independence for older persons, and which include: (1) Congregate activities, including, but not limited to, senior centers, group meals, volunteerism, adult day services, and recreation; and (2) individual services, including, but not limited to, specialized transportation, meals-on-wheels, home handyman services, home health care services, legal services, counseling related to problems of aging or encouraging access to aging services, and senior companion volunteer services.

**Source:** Laws 1982, LB 404, § 10; Laws 1991, LB 58, § 10; Laws 2000, LB 819, § 156; Laws 2000, LB 1101, § 1.

**81-2211 Senior service center, defined.**

Senior service center shall mean a senior center or other community facility that provides ready access to a broad range of community aging services.

**Source:** Laws 1982, LB 404, § 11.

**81-2211.01 Greatest economic need, defined.**

Greatest economic need shall mean the need resulting from an income level at or below the poverty level as established by the Office of Management and Budget.

**Source:** Laws 1991, LB 58, § 11.

**81-2211.02 Greatest social need, defined.**

Greatest social need shall mean the need caused by noneconomic factors, including physical and mental disabilities, language barriers, and cultural, social, or geographic isolation including that caused by racial or ethnic status, which restricts an individual's ability to perform normal daily tasks, which threatens such individual's capacity to live independently, or which interferes with the exercise of rights and privileges.

**Source:** Laws 1991, LB 58, § 12.

**81-2211.03 Older individual, defined.**

Older individual shall mean any individual who is sixty years of age or older, the spouse of an individual who is sixty years of age or older, or, for purposes of employment services, any individual who is fifty-five years of age or older.

**Source:** Laws 1991, LB 58, § 13.

**81-2212 Committee; advise department; areas enumerated; serve as appeal panel.**

In addition to duties enumerated in section 68-1104, the committee shall advise the department regarding:

- (1) The state plan on aging as developed and prepared by the department;
- (2) Policies adopted by the department;
- (3) The needs of the state's older individuals;
- (4) The development of the state plan and policies which affect the state's older individuals;
- (5) Such rules, regulations, and standards as may be adopted by the department; and
- (6) A community aging services budget for submission to the Legislature by the department.

The committee shall also act as a panel for the hearing and resolution of any appeal requested by an area agency on aging should the department disapprove the area plan and budget or amendments as submitted.

**Source:** Laws 1982, LB 404, § 12; Laws 1991, LB 58, § 14.

**81-2213 Department; powers and duties relating to aging.**

The department shall have the following powers and duties:

- (1) To develop, approve, and submit to the Governor a two-year, three-year, or four-year state plan on aging, as determined by the department, for purposes of administering grant funds allocated to the state under the federal Older Americans Act, as now or hereafter amended, or administering state funds allocated to the Nebraska Community Aging Services Act;
- (2) To cooperate with similar departments, commissions, or councils in the federal government and in other states;
- (3) To adopt and promulgate rules, regulations, and bylaws governing its procedure and activities and as necessary to carry out the policies of the department and the policies prescribed by the Administration on Aging pursuant to the federal Older Americans Act, as now or hereafter amended;
- (4) To create committees to aid in the discharge of its powers and duties;
- (5) To cooperate with and assist other state and local governmental agencies and officials on matters relating to services for older individuals;
- (6) To divide the state into planning-and-service areas as provided in section 71-807 for behavioral health regions, except that Regions 3 and 5 may each be divided into two planning-and-service areas with boundaries as established by the department for planning-and-service areas in existence in those regions on July 1, 1982;
- (7) To establish minimum standards for program operations and to adopt and promulgate rules and regulations for the performance of area agencies on aging

and for any services provided by such area agencies on aging which are funded in whole or in part under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended;

(8) To require the submission of a one-year and a five-year area plan and budget by each area agency on aging or agency seeking designation as an area agency on aging. Such plans and budgets shall be submitted sixty days prior to the start of each fiscal year in accordance with the uniform area plan format and other instructions issued by the department;

(9) To review and approve a one-year and a five-year area plan and budget for the support of each area agency on aging and the provision of eligible activities and services as defined in section 81-2222;

(10) To adopt and submit to the Legislature a community aging services budget;

(11) To review the performance of each area agency on aging and, based on the department-approved area plan and budget, to determine the continued designation or the withdrawal of the designation of an area agency on aging receiving or requesting resources through the state or under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended. After consultation with the director of the area agency on aging and the governing unit of the area agency on aging, the department may withdraw a designation when it can be shown that federal or state laws, rules, or regulations have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or older individuals are not receiving appropriate services within available resources. Withdrawal of a designation may be appealed to the department. Upon withdrawal of a designation, the department may temporarily perform all or part of the functions and responsibilities of the area agency on aging, may designate another agency to perform such functions and responsibilities identified by the department until the designation of a new area agency on aging, and, when deemed necessary, may temporarily deliver services to assure continuity;

(12) To conduct continuing studies and analyses of the problems faced by older individuals within the state and develop such recommendations for administrative or legislative action as appear necessary;

(13) To develop grants and plans, enter into contracts, accept gifts, grants, and federal funds, and do all things necessary and proper to discharge these powers and duties;

(14) To accept and administer any other programs or resources delegated, designated, assigned, or awarded to the department from public or private sources;

(15) To report and make recommendations to the Governor and the Legislature on the activities of the department and the committee and improvements or additional resources needed to promote the general welfare of older individuals in Nebraska. Each member of the Legislature shall receive a copy of the report; and

(16) Such other powers and duties necessary to effectively implement the Nebraska Community Aging Services Act.

**Source:** Laws 1982, LB 404, § 13; Laws 1991, LB 58, § 15; Laws 1993, LB 818, § 1; Laws 1996, LB 1044, § 873; Laws 2004, LB 1083, § 128; Laws 2007, LB296, § 764.

**81-2214 Repealed. Laws 1996, LB 1044, § 985.****81-2214.01 Repealed. Laws 1992, LB 677, § 35.****81-2214.02 Records and information; disclosure prohibited; exceptions.**

No record of any person receiving any services funded through the department and no information of a sensitive or confidential nature may be disclosed or released to any other party without the written consent of the person or his or her legal representative unless the disclosure is required for the furtherance of purposes directly associated with the person's plan for services, is required by court order, or is necessary for program monitoring by authorized federal, state, or local monitoring agencies, including the department and the Legislature, or for purposes of the Adult Protective Services Act.

**Source:** Laws 1991, LB 58, § 17.

**Cross References**

**Adult Protective Services Act**, see section 28-348.

**81-2215 Area agency on aging; department designate.**

The department shall designate an area agency on aging for each planning-and-service area designated pursuant to subdivision (6) of section 81-2213.

**Source:** Laws 1982, LB 404, § 15.

**81-2216 Area agency on aging; designation by department.**

The department shall designate, to perform the functions of an area agency on aging, any office or agency having the necessary authority and capacity which is proposed by the chief elected officials of a combination of units of local general-purpose governments formed under the Interlocal Cooperation Act or the Joint Public Agency Act.

**Source:** Laws 1982, LB 404, § 16; Laws 1999, LB 87, § 98.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**81-2217 Area agency on aging; department; duties prior to designation.**

Before designating an area agency on aging for a planning-and-service area, the department shall:

- (1) Provide written notice to the county government in the planning-and-service area of the pending designation no less than sixty days before taking action;
- (2) Conduct an onsite assessment to determine whether the agency which is being considered for designation as an area agency on aging has the capacity and authority to perform all the functions of an area agency on aging specified by the Nebraska Community Aging Services Act; and
- (3) Consider the views of the units of general-purpose local government within the planning-and-service area.

**Source:** Laws 1982, LB 404, § 17; Laws 1991, LB 58, § 19.

**81-2218 Area agency on aging; governing unit; duties.**

The governing unit of the designated area agency on aging shall:

(1) In accordance with section 81-2219, employ a qualified administrator to serve as the chief executive officer for the administration of the agency and employ adequate staff for carrying out the area program plan;

(2) Approve and submit a one-year and a five-year area plan and budget to the department by July 1 of each year. The plan shall comply with the requirements of the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended;

(3) Approve such contracts and agreements as are necessary to carry out the functions of the agency; and

(4) Establish and consult with an area advisory council on needs, services, and policies affecting older individuals in the area. The advisory council for the area agency on aging shall establish bylaws which specify the role and functions of the council, number of members, selection of members, term of membership, and frequency of meetings.

**Source:** Laws 1982, LB 404, § 18; Laws 1991, LB 58, § 20.

**81-2219 Area agencies on aging; chief executive officer and staff; qualifications; personnel policies.**

Each area agency on aging governing unit shall establish minimum qualifications of education, training, and experience for its chief executive officer and written policies and procedures for the selection, appointment, and annual performance rating of its chief executive officer and staff.

**Source:** Laws 1982, LB 404, § 19; Laws 1991, LB 58, § 21.

**81-2220 Area agency on aging; duties.**

An area agency on aging shall:

(1) Monitor, evaluate, and comment on policies, programs, hearings, and community actions which affect older individuals;

(2) Conduct public hearings, studies, and assessments on the needs of older individuals living in the planning-and-service area;

(3) Represent the interests of older individuals to public officials and to public and private agencies or organizations;

(4) Cooperate, coordinate, and plan with other agencies, organizations, or individuals to promote benefits and opportunities for older individuals consistent with the goals of the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended;

(5) Develop a one-year and a five-year area plan and budget for a comprehensive, coordinated program of community aging services needed by older individuals of the area and consistent with the requirements of the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended;

(6) Monitor and evaluate the activities of service providers to ensure that the services being provided comply with the terms of the grant or contract. When a provider is found to be in breach of the terms of its grant or contract, the area agency on aging shall enforce the terms of the grant or contract;

(7) Comply with rules, regulations, and requirements of the department which have been developed in consultation with the area agencies on aging for

client and fiscal information and provide to the department information necessary for federal and state reporting, program evaluation, program management, fiscal control, and research needs; and

(8) Provide technical assistance to service providers as needed, prepare written monitoring reports, and provide written reports of onsite assessments of all service providers funded by the area agency on aging according to the rules and regulations promulgated by the department.

**Source:** Laws 1982, LB 404, § 20; Laws 1991, LB 58, § 22.

**81-2221 Area plan and budget; contents.**

The one-year and the five-year area plan and budget shall contain at least the following:

(1) Provisions required by the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended; and

(2) A detailed statement of the manner in which the area agency on aging develops, administers, and supports the comprehensive, coordinated program of community aging services throughout the area.

The department may require minimum service levels for the area and establish minimum standards for activities which carry out the requirements of the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended.

**Source:** Laws 1982, LB 404, § 21; Laws 1991, LB 58, § 23.

**81-2222 Funding eligibility; activities and services enumerated.**

Activities and services eligible for funding under the Nebraska Community Aging Services Act and an approved plan are:

(1) Those agency functions and services necessary to carry out the agency's responsibilities under the act and in its plan, including, but not limited to, administration, management, information, referral, counseling, program evaluation, needs assessment, research, training, program development, outreach, coordination, advocacy, planning, technical assistance, contracting, and promotion; and

(2) Those community aging services necessary to promote, restore, or support self-sufficiency for older individuals, including (a) congregate activities which (i) are organized and provided on a group basis and delivered in or through a senior service center, (ii) have as their purpose to serve older individuals as a group, and (iii) carry out the goals of the act and (b) individual services which (i) are organized and provided on a one-to-one basis in home or through a senior service center, (ii) have as their purpose to serve an individual or family need, and (iii) carry out the goals of the act.

**Source:** Laws 1982, LB 404, § 22; Laws 1991, LB 58, § 24.

**81-2223 Services; eligibility; determination.**

Within an area plan, the determination of eligibility of older individuals to benefit from community aging services shall be as follows:

(1) For congregate activities, the determination shall be left to the area agency on aging, taking into account (a) the needs, resources, and standards of

communities and older individuals in the area and (b) the recommendations of the area advisory council; and

(2) For individual services, the determination shall be by (a) an assessment of an individual's or family's circumstances and (b) the development of a service plan.

**Source:** Laws 1982, LB 404, § 23; Laws 1991, LB 58, § 25.

**81-2224 Area agency on aging; reimbursement for costs; how made.**

The department shall reimburse each designated area agency on aging for seventy-five percent of the actual cost of providing eligible activities and services as defined in section 81-2222. Such reimbursement shall be made from (1) state funds appropriated by the Legislature, (2) federal funds allocated to the department, including federal funds allocated under the Older Americans Act, as now or hereafter amended, and (3) other funds as available. The payments shall be made by the department on or before the twentieth day of each month. If state funds appropriated, federal funds allocated, or other funds available are insufficient to finance the department-approved plan and budget for each designated area agency on aging, the reimbursement to each area agency on aging shall be proportionately reduced. If an area agency on aging chooses to exceed the budget approved by the department, costs in excess of the approved budget shall not be reimbursed by the department.

**Source:** Laws 1982, LB 404, § 24; Laws 1991, LB 58, § 26; Laws 1993, LB 818, § 2.

**81-2225 Reimbursement for costs; qualification.**

To qualify for reimbursement by the department, as provided for in section 81-2224, a designated area agency on aging shall have a department-approved plan and budget and shall provide no less than twenty-five percent of such approved plan and budget from local sources. Local sources shall include, but shall not be limited to, local tax dollars, donations, and fees, and shall not include receipts from federal or state sources, except federal revenue-sharing trust funds.

**Source:** Laws 1982, LB 404, § 25.

**81-2225.01 Intrastate funding formula; department; duties.**

(1) The department, after consultation with the area agencies on aging, shall develop and use an intrastate funding formula for the allocation to area agencies on aging of state and federal funds awarded pursuant to the Nebraska Community Aging Services Act and the Older Americans Act, as now or hereafter amended.

(2) The area agencies on aging shall comply with the intrastate funding formula determined by the department.

**Source:** Laws 1991, LB 58, § 27.

**81-2226 Area agency on aging; malfeasance; effect.**

In the event of a documented malfeasance on the part of any area agency on aging in the administration of its area plan, and the failure of the governing unit of the area agency to take corrective action within a reasonable time, the department shall, with the advice of the committee, terminate funding to the

area agency governing unit by disapproving the area plan for that area agency on aging.

**Source:** Laws 1982, LB 404, § 26; Laws 1996, LB 1044, § 874; Laws 2007, LB296, § 765.

**81-2227 Department; submit budget.**

Based upon the department-approved plan and budget for each designated area agency on aging, the department shall submit a budget request to the Department of Administrative Services no later than September 15 for each even-numbered year, except for 2002, no later than the date provided in section 81-132, for the funds required to achieve the objectives of the Nebraska Community Aging Services Act. Such request shall include all federal funds available to the department for reimbursement to area agencies on aging.

**Source:** Laws 1982, LB 404, § 27; Laws 1991, LB 58, § 28; Laws 2002, Second Spec. Sess., LB 12, § 4.

**81-2228 Area agency on aging; maintain local tax expenditures.**

Any area agency on aging receiving state funds pursuant to the Nebraska Community Aging Services Act shall maintain, as a minimum in its area plan budget, the same level of funds expended from local tax sources as was expended in the area plan budget for the year ending June 30, 1981.

**Source:** Laws 1982, LB 404, § 28; Laws 1991, LB 58, § 29.

(b) CARE MANAGEMENT SERVICES

**81-2229 Legislative intent.**

It is the intent of the Legislature that:

(1) The state establish a statewide system of care management units through the area agencies on aging to aid in the coordination of the delivery of a continuum of services targeted primarily to the state's older population;

(2) The continuum of services include the proper utilization of all available care resources, including community-based services and institutionalization, to ensure that persons are receiving, when reasonably possible, the level of care that best matches their level of need;

(3) The Department of Health and Human Services apply for and implement a Title XIX medicaid waiver as a way to provide care management services to medicaid clients and to control the rising costs of medicaid; and

(4) The Department of Health and Human Services develop a uniform method for data collection by care management units.

**Source:** Laws 1987, LB 42, § 1; Laws 1996, LB 1044, § 875; Laws 2007, LB296, § 766.

**81-2230 Purpose of sections.**

The purpose of sections 81-2229 to 81-2235 shall be to provide for care management units which include ongoing consultation, assessment, care plan development, referral, and review for individuals, primarily older Nebraskans, in need of long-term care. With the individual's approval, the care management unit shall help coordinate the developed plan of care using the most appropri-

ate available public and private resources to meet the individual's long-term care needs.

**Source:** Laws 1987, LB 42, § 2; Laws 1996, LB 1044, § 876.

**81-2231 Care management units; certification; standards.**

The care management units shall be certified by the Department of Health and Human Services which shall adopt and promulgate rules and regulations within two hundred forty days of August 30, 1987, providing standards for certification. Such standards shall be developed in consultation with appropriate state agencies and professional organizations and shall provide that:

(1) The care management units shall be subject to periodic review by the department;

(2) The care management units shall provide an assessment of an individual's entire range of needs, including, but not limited to, functional, psychosocial, and environmental needs;

(3) The care management units shall develop a long-term care plan for each client in consultation with the individual and if possible his or her family utilizing and coordinating available and appropriate public and private resources;

(4) The care management units shall periodically monitor the delivery of services to each client and review the individual's plan to determine if the plan remains appropriate;

(5) The care management units shall be operated separately from any direct care programs provided by the area agencies on aging; and

(6) A standardized long-term care assessment document shall be developed that incorporates, when reasonably possible, (a) assessment procedures currently used by area agencies on aging and (b) assessment criteria designed to reduce duplication of effort with related long-term care services, both public and private, including assessment material necessary to determine service eligibility by the Department of Health and Human Services.

**Source:** Laws 1987, LB 42, § 3; Laws 1996, LB 1044, § 877.

**81-2232 Area agency on aging; prepare plan; procedure.**

Within sixty days of the adoption and promulgation of the standards for certification by the Department of Health and Human Services, each area agency on aging shall submit to the department for approval a plan of operation to either provide and supervise or subcontract for at least one certified care management unit to provide all eligible individuals residing in its planning-and-service area with long-term care management services. Within thirty days of receipt of a plan for approval, the department shall notify the area agency on aging of its acceptance or denial of the plan. If the plan is denied, the department shall give the reasons for denial and the area agency on aging shall submit a revised plan. If the area agency on aging does not submit a revised plan within thirty days of the denial, the Department of Health and Human Services may contract with another public or private entity to serve that planning-and-service area.

**Source:** Laws 1987, LB 42, § 4; Laws 1996, LB 1044, § 878.

**81-2233 Department; report.**

The Department of Health and Human Services shall submit an annual report on care management units to the Governor and the Legislature.

**Source:** Laws 1987, LB 42, § 5; Laws 1996, LB 1044, § 879.

**81-2234 Care management unit; fee scale; reimbursement.**

(1) Individuals who have family income below three hundred percent of a poverty level determined by the Department of Health and Human Services based on any federal poverty index or similar guidelines shall pay from zero to ninety percent of the fee for the services provided by a care management unit. The fee scale shall be adopted and promulgated as rules and regulations by the department and shall reflect the income range of individuals.

(2) A care management unit may receive reimbursement from state and federal government programs which allow for reimbursement for care management or case management services.

(3) Individuals not covered by subsection (1) or (2) of this section shall pay the full fee for services provided by a care management unit.

**Source:** Laws 1987, LB 42, § 6; Laws 1996, LB 1044, § 880.

**81-2235 Care management unit; reimbursement by department.**

(1) Each care management unit may be reimbursed by the Department of Health and Human Services for costs not paid for by the individual or through other reimbursement specified in section 81-2234. Reimbursement by the department shall be based on actual casework time units expended on all care management services provided and shall include expenses for personnel, administration and planning, client eligibility review, contractual services, and necessary support services and other necessary actual and indirect costs. Standardized rates of reimbursement shall be adopted and promulgated by the department and shall be adjusted at least every three years.

(2) Appropriations for reimbursement by the department for services provided under sections 81-2229 to 81-2235 and for the costs of the department to administer the program shall be appropriated separately from funds appropriated under the Nebraska Community Aging Services Act.

(3) Funds appropriated under this section shall not be used to replace funds appropriated under the Nebraska Community Aging Services Act and granted to the area agencies on aging prior to August 30, 1987, and used to provide case management or care management services in their planning-and-service area, except that such funds may be replaced by non-Nebraska Community Aging Services funds that are obtained subsequent to August 30, 1987, as allowed under rules and regulations adopted and promulgated by the Department of Health and Human Services.

**Source:** Laws 1987, LB 42, § 7; Laws 1996, LB 1044, § 881.

**Cross References**

Nebraska Community Aging Services Act, see section 81-2201.

**81-2236 Repealed. Laws 1996, LB 1044, § 985.**

(c) LONG-TERM CARE OMBUDSMAN

**81-2237 Act, how cited.**

Sections 81-2237 to 81-2264 shall be known and may be cited as the Long-Term Care Ombudsman Act.

**Source:** Laws 1992, LB 677, § 1.

**81-2238 Definitions, where found.**

For purposes of the Long-Term Care Ombudsman Act, the definitions found in sections 81-2239 to 81-2248 shall be used.

**Source:** Laws 1992, LB 677, § 2.

**81-2239 Department, defined.**

Department shall mean the Department of Health and Human Services.

**Source:** Laws 1992, LB 677, § 3; Laws 1996, LB 1044, § 882.

**81-2240 Repealed. Laws 1996, LB 1044, § 985.**

**81-2241 Repealed. Laws 2007, LB 296, § 815.**

**81-2242 Local long-term care ombudsman program, defined.**

Local long-term care ombudsman program shall mean an entity, either public or private and nonprofit, designated as a local long-term care ombudsman program by the department.

**Source:** Laws 1992, LB 677, § 6.

**81-2243 Long-term care facility, defined.**

Long-term care facility shall include:

- (1) A nursing facility;
- (2) An assisted-living facility;
- (3) Any other adult care home;
- (4) A continuing care community;
- (5) Any swing bed in an acute care facility or extended care facility; and
- (6) Any adult day service.

**Source:** Laws 1992, LB 677, § 7; Laws 1997, LB 608, § 26; Laws 2000, LB 819, § 157.

**81-2244 Office, defined.**

Office shall mean the office of the state long-term care ombudsman.

**Source:** Laws 1992, LB 677, § 8.

**81-2245 Older Americans Act, defined.**

Older Americans Act shall mean the federal Older Americans Act, as amended.

**Source:** Laws 1992, LB 677, § 9.

**81-2246 Older individual, defined.**

Older individual shall mean an individual who is sixty years of age or older.

**Source:** Laws 1992, LB 677, § 10.

**81-2247 Ombudsman advocate, defined.**

Ombudsman advocate shall mean an employee or a volunteer of the office other than the state long-term care ombudsman or of a local program trained and certified to carry out duties prescribed in rules and regulations of the office.

**Source:** Laws 1992, LB 677, § 11.

**81-2248 State long-term care ombudsman, defined.**

State long-term care ombudsman shall mean the person or persons appointed under section 81-2249 to fulfill the responsibilities of the office.

**Source:** Laws 1992, LB 677, § 12; Laws 2007, LB296, § 767.

**81-2249 Office; created; state long-term care ombudsman; appointed.**

Pursuant to the Older Americans Act, the office of the state long-term care ombudsman is hereby created. The department shall establish and operate the office. The chief executive officer of the department shall appoint the state long-term care ombudsman.

**Source:** Laws 1992, LB 677, § 13; Laws 2007, LB296, § 768.

**81-2250 Long-term care ombudsman program; established; contents.**

The department shall establish a long-term care ombudsman program consisting of the state long-term care ombudsman and any local long-term care ombudsman programs. The program, as approved and administered by the department, shall:

(1) Investigate and resolve complaints not reportable under the Adult Protective Services Act made by or on behalf of older individuals who are patients, residents, or clients of long-term care facilities relating to action, inaction, or decisions of providers of long-term care services or their representatives, of public agencies, or of social service agencies which may adversely affect the health, safety, welfare, or rights of such older individuals. The department shall adopt and promulgate rules and regulations regarding the handling of complaints received under this section, including procedures for conducting investigations of complaints. The rules and regulations shall include procedures to ensure that no state long-term care ombudsman or ombudsman advocate investigates any complaint involving a provider with which the representative was once employed or associated;

(2) Provide for the training of the state long-term care ombudsman and ombudsman advocates and promote the development of citizen organizations to participate in the program, provide training to ombudsman advocates and staff of local long-term care ombudsman programs, issue certificates attesting to the successful completion of the prescribed training, and provide ongoing technical assistance to such local programs;

(3) Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services and recommend any changes in such laws, regulations, and policies deemed by the long-term care ombudsman program to be appropriate;

(4) Establish a statewide, uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The data shall be submitted to the department at least on an annual basis;

(5) Prepare reports as requested by the department and provide policy, regulatory, and legislative recommendations to solve problems, resolve complaints, and improve the quality of care and life in long-term care facilities;

(6) Provide for public forums to discuss concerns and problems relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or civil rights of residents of long-term care facilities and their representatives, public agencies and entities, and social service agencies; and

(7) Provide information to public agencies, legislators, and others, as deemed necessary by the department, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities.

**Source:** Laws 1992, LB 677, § 14; Laws 1996, LB 1044, § 884; Laws 2007, LB296, § 769.

**Cross References**

**Adult Protective Services Act**, see section 28-348.

**81-2251 Rules and regulations; state long-term care ombudsman; qualifications.**

The department shall adopt and promulgate rules and regulations to carry out the Long-Term Care Ombudsman Act. The department shall ensure that the state long-term care ombudsman has no conflicts of interest in fulfilling the duties of the office, is capable of administering the office impartially, has an understanding of long-term care issues, has experience in the fields of aging and health care, and has worked with and been involved in volunteer programs.

**Source:** Laws 1992, LB 677, § 15; Laws 2007, LB296, § 770.

**81-2252 Local long-term care ombudsman programs; designation; provisional status.**

The department may designate for two-year periods, within each planning-and-service area designated pursuant to section 81-2213, local long-term care ombudsman programs in accordance with rules and regulations established by the department. Such rules and regulations shall include specifications regarding the sites of the offices of the local long-term care ombudsman programs and requirements concerning staffing, levels of training required for ombudsman advocates and staff, standards of operation, and program review.

The office may withdraw or provisionally maintain the designation of an entity as a local long-term care ombudsman program if the entity fails to meet the rules and regulations established by the department. If the designation of a local long-term care ombudsman program is provisionally maintained, the office shall notify the program of the reasons for the provisional status, of the changes or corrections necessary for the removal of the provisional status, of the length of time permitted to make the changes or corrections, and that the office will withdraw the designation if the program does not comply with the requirements specified in the notice. If the designation of a local long-term care

ombudsman program is withdrawn, the office may provide for the continuation of long-term care ombudsman services for that area.

**Source:** Laws 1992, LB 677, § 16; Laws 2007, LB296, § 771.

**81-2253 Staff training requirements; ombudsman advocate certification; required.**

(1) The state long-term care ombudsman shall ensure that the staff of the office and of local long-term care ombudsman programs are trained in:

(a) Federal, state, and local laws, regulations, and policies with respect to long-term care facilities in the state;

(b) Investigative techniques;

(c) Management of long-term care facilities; and

(d) Such other matters as the department deems appropriate.

(2) The state long-term care ombudsman shall develop procedures for the certification of ombudsman advocates.

(3) No ombudsman advocate shall investigate any complaint filed with the office unless such person is certified by the office.

**Source:** Laws 1992, LB 677, § 17.

**81-2254 Office; investigations; procedure.**

The office shall investigate and seek to resolve complaints and concerns not reportable under the Adult Protective Services Act communicated by or on behalf of an older individual who is a patient, resident, or client of any long-term care facility. The office may initiate investigations based on its observations of the conditions in a long-term care facility. If the office does not investigate a complaint, the complainant shall be notified of the decision not to investigate and the reasons for the decision.

**Source:** Laws 1992, LB 677, § 18.

**Cross References**

**Adult Protective Services Act**, see section 28-348.

**81-2255 Abuse, neglect, or exploitation; referral required; procedure.**

(1) When abuse, neglect, or exploitation of an older individual who is a patient, resident, or client of a long-term care facility is suspected, the long-term care ombudsman program shall make an immediate referral to the department or the appropriate law enforcement agency. The long-term care ombudsman program shall coordinate with adult protective services or the appropriate law enforcement agency, if requested, pursuant to any investigation of such abuse, neglect, or exploitation.

(2) Any state agency or board which responds to a complaint against a long-term care facility or an individual employed by a long-term care facility that was referred to the agency or board by the office shall forward to the office copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the long-term care facility or the individual.

**Source:** Laws 1992, LB 677, § 19; Laws 1996, LB 1044, § 885; Laws 2007, LB296, § 772.

**81-2256 Long-term care facility; notice required; form.**

Every long-term care facility shall post in a conspicuous location a notice of the name, address, and telephone number of the office and the name and telephone number of the nearest local long-term care ombudsman program. A brief description of the services provided by the office and the nearest long-term care ombudsman program shall be included in the notice. The form of the notice shall be approved by the office.

**Source:** Laws 1992, LB 677, § 20.

**81-2257 Office; access to governmental records.**

Upon request, the office shall have access to any record of a state or local governmental agency which is necessary to carry out its responsibilities under the Long-Term Care Ombudsman Act.

**Source:** Laws 1992, LB 677, § 21.

**81-2258 Office; access to medical and personal records; liability for disclosure; confidentiality.**

(1) In order for the office to carry out its responsibilities under the Long-Term Care Ombudsman Act, the office shall have access to the medical and personal records of an older individual who is a patient, resident, or client of a long-term care facility which are retained by the facility. If the older individual:

(a) Has the ability to consent in writing, access may only be obtained by the written consent of the older individual;

(b) Is unable to consent in writing, oral consent may be given in the presence of a third party as witness before access is given;

(c) Is under guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of records, the office shall obtain the permission of the guardian or conservator for review of the records unless (i) the existence of the guardianship or conservatorship is unknown to the office or the facility, (ii) the guardian or conservator cannot be reached within five working days, (iii) the subject of the complaint is the guardian or the conservator, or (iv) in case of an emergency; and

(d) Is unable to express written or oral consent and there is no guardian or conservator or the notification of the guardian or conservator is not applicable for reasons set forth in subdivision (c) of this subsection or the older individual is deceased, inspection of records may be made by the state long-term care ombudsman.

(2) Copies of records may be reproduced by the office.

(3) Upon request by the office, a long-term care facility shall provide to the office the name, address, and telephone number of the guardian, conservator, attorney in fact, legal representative, or next of kin of any patient, resident, or client.

(4) The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

(5) The office shall establish procedures to protect the confidentiality of records obtained pursuant to this section.

**Source:** Laws 1992, LB 677, § 23.

**81-2259 State long-term care ombudsman and state ombudsman advocate; access to patient, resident, or client.**

A state long-term care ombudsman or an ombudsman advocate shall have immediate access to any consenting patient, resident, or client of a long-term care facility for the purpose of effectively carrying out the Long-Term Care Ombudsman Act if such state long-term care ombudsman or ombudsman advocate identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

**Source:** Laws 1992, LB 677, § 22.

**81-2260 Complaints or investigations; confidentiality; exceptions.**

(1) Information relating to any complaints or investigation made pursuant to the Long-Term Care Ombudsman Act that discloses the identities of complainants, patients, residents, or clients shall remain confidential except:

(a) When disclosure is authorized in writing by the complainant, patient, resident, or client or the older individual's guardian or legal representative;

(b) When disclosure is necessary to an investigation of abuse, neglect, or exploitation and the disclosure is made to the Attorney General, the county attorney, or the department;

(c) When disclosure is necessary for the provision of services to the patient, resident, or client and the patient, resident, or client is unable to express written or oral consent; or

(d) Upon court order.

(2) Access to the records and files of the office relating to any complaint or investigation made pursuant to the Long-Term Care Ombudsman Act shall be permitted only at the discretion of the state long-term care ombudsman, except that the identity of any complainant, witness, patient, resident, or client shall not be disclosed by such ombudsman except:

(a) When disclosure is authorized in writing by such complainant, witness, patient, resident, or client or the older individual's guardian or legal representative;

(b) Upon court order; or

(c) Pursuant to subsection (3) of this section.

(3) The records and files of the office shall be released to adult protective services of the department if it so requests for purposes of the Adult Protective Services Act.

(4) The department shall have access to the records and files of the office to verify the effectiveness and quality of the long-term care ombudsman program.

**Source:** Laws 1992, LB 677, § 24; Laws 1996, LB 1044, § 886; Laws 2007, LB296, § 773.

**Cross References**

**Adult Protective Services Act**, see section 28-348.

**81-2261 Department; duties.**

The department shall ensure that:

(1) No individual involved in the designation of the state long-term care ombudsman has a pecuniary or other interest in a long-term care facility;

(2) No state long-term care ombudsman or ombudsman advocate has a pecuniary or other interest in a long-term care facility;

(3) Mechanisms are in place to identify and remedy all such or other similar conflicts; and

(4) The office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of patients, residents, and clients of long-term care facilities.

**Source:** Laws 1992, LB 677, § 25.

**81-2262 Local long-term care ombudsman program and certified individual; treatment.**

Any local long-term care ombudsman program or any individual certified by the office, whether an employee or an unpaid volunteer, shall be treated as a representative of the office.

**Source:** Laws 1992, LB 677, § 26.

**81-2263 State long-term care ombudsman and ombudsman advocate; immunity from liability; legal counsel.**

No state long-term care ombudsman or ombudsman advocate shall be liable for the good faith performance of official duties pursuant to the Long-Term Care Ombudsman Act. Pursuant to the Older Americans Act, the department shall ensure that adequate legal counsel is available to the office for advice and consultation and that legal representation is provided to any state long-term care ombudsman or ombudsman advocate against whom any legal action is brought in connection with his or her official duties.

**Source:** Laws 1992, LB 677, § 27.

**81-2264 Interference with lawful actions; institution of certain proceedings; prohibited.**

(1) No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility by an individual certified pursuant to section 81-2253 who identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

(2) No person shall institute discriminatory, disciplinary, or retaliatory action against any officer or employee of a long-term care facility or governmental agency or against any patient, resident, or client of a long-term care facility or guardian or family member thereof for any communications by him or her with the office or for any information given or disclosed by him or her in good faith to aid the office in carrying out its duties and responsibilities.

**Source:** Laws 1992, LB 677, § 28.

(d) PREADMISSION SCREENING

**81-2265 Legislative intent.**

It is the intent of the Legislature that the Department of Health and Human Services shall amend its current medicaid waiver to provide any federal funding which may be available for the purpose of a pilot project for preadmis-

sion screening and that the department shall develop and implement such a pilot preadmission screening project.

**Source:** Laws 1993, LB 801, § 1; Laws 1996, LB 1044, § 887; Laws 2007, LB296, § 774.

**81-2266 Repealed. Laws 2000, LB 888, § 1.**

**81-2267 Evaluation of pilot project.**

The Department of Health and Human Services shall evaluate the pilot project for the effectiveness of using medicaid funds, any savings of those funds realized which can be used to serve the ever-growing number of frail and vulnerable older individuals in Nebraska, and the effectiveness of preadmission screening and care management to divert individuals from nursing facility admission who do not need that level of care.

**Source:** Laws 1993, LB 801, § 3; Laws 1996, LB 1044, § 889; Laws 2007, LB296, § 775.

**81-2268 Medicaid waiver funds; use authorized.**

Services identified by care plans for those eligible for medical assistance whose care needs are appropriate for nursing facilities but whose needs can be met outside a nursing facility may be purchased with medicaid waiver funds available through the home and community-based waiver for the aged and disabled administered by the Department of Health and Human Services.

**Source:** Laws 1993, LB 801, § 4; Laws 1996, LB 1044, § 890; Laws 2007, LB296, § 776.

**81-2269 Statewide project; establishment.**

(1) The Department of Health and Human Services, through its care management units, shall establish a statewide project to prevent premature institutionalization of nursing facility medicaid-eligible applicants sixty-five years of age and older through preadmission screening. In any case in which a determination has not been made within forty-eight hours, the nursing facility applicant shall be deemed appropriate for nursing home admission until such time as preadmission screening is completed, notwithstanding that a preadmission screening has not been done. The Department of Health and Human Services shall use the preadmission screening services of the project.

(2) Subsection (1) of this section becomes operative on July 1, 1997.

**Source:** Laws 1993, LB 801, § 5; Laws 1995, LB 406, § 90; Laws 1996, LB 1044, § 891.

**81-2270 Purchase of services with state funds; sliding-fee scale.**

Services identified by care plans for those not eligible for services provided through the home and community-based waiver for the aged and disabled may be purchased with funds appropriated through sections 81-2265 to 81-2271, based on a sliding-fee scale. The Department of Health and Human Services shall adopt and promulgate rules and regulations to establish procedures and standards to implement this section of the pilot project for preadmission screening.

**Source:** Laws 1993, LB 801, § 6; Laws 1996, LB 1044, § 892.

**81-2271 Rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations to establish procedures and standards to implement the intent of sections 81-2265 to 81-2271.

**Source:** Laws 1993, LB 801, § 7; Laws 1996, LB 1044, § 893.

## (e) DEPARTMENT ON AGING CASH FUND

**81-2272 Repealed. Laws 1996, LB 1044, § 985.**

## (f) NEBRASKA SENIOR COMPANION VOLUNTEER PROGRAM ACT

**81-2273 Act, how cited.**

Sections 81-2273 to 81-2283 shall be known and may be cited as the Nebraska Senior Companion Volunteer Program Act.

**Source:** Laws 2000, LB 1101, § 2.

**81-2274 Purpose of act.**

The purpose of the Nebraska Senior Companion Volunteer Program Act is to provide volunteer community service opportunities to low-income older persons for the benefit of frail elderly persons with special needs.

**Source:** Laws 2000, LB 1101, § 3.

**81-2275 Terms, defined.**

For purposes of the Nebraska Senior Companion Volunteer Program Act:

- (1) Department means the Department of Health and Human Services;
- (2) Direct service contractor means any public or private nonprofit organization that (a) is not currently receiving federal funding for the federal senior companion program and (b) demonstrates the ability to provide the services specified in section 81-2277;
- (3) Frail elderly means a person who (a) is sixty years of age or older, (b) has a physical, mental, or emotional health limitation, and (c) needs assistance to achieve and maintain independent living; and
- (4) Senior companion volunteer means an individual who (a) is sixty years of age or older, (b) has an annual income not exceeding one hundred twenty-five percent of the federal poverty level, (c) is determined by a physical examination to be capable, with or without reasonable accommodation, of serving adults with special needs without detriment to himself or herself or the persons served, and (d) provides companion services at least four hours a day, four days a week.

**Source:** Laws 2000, LB 1101, § 4.

**81-2276 Nebraska Senior Companion Volunteer Program; established.**

The department shall establish and coordinate the Nebraska Senior Companion Volunteer Program and shall utilize senior companion volunteers provided by one or more direct service contractors.

**Source:** Laws 2000, LB 1101, § 5.

**81-2277 Direct service contractor; powers and duties.**

A direct service contractor:

- (1) May apply to the department for a grant pursuant to section 81-2281;
- (2) Shall recruit, select, train, and assign staff and senior companion volunteers;
- (3) Shall provide for supervision of senior companion volunteers;
- (4) Shall provide or arrange for meals and transportation for senior companion volunteers if funds are available; and
- (5) Shall maintain a systematic means of capturing and reporting all program data required by the department.

**Source:** Laws 2000, LB 1101, § 6.

**81-2278 Nebraska Senior Companion Volunteer Program; eligible recipients.**

The Nebraska Senior Companion Volunteer Program shall provide companion services to the frail elderly who (1) are bedfast or too frail or too ill to be transported to special programs, (2) have withdrawn from all social interaction or are confined due to psychological problems, or (3) desire but are unable to participate in adult day services programs because openings are unavailable.

**Source:** Laws 2000, LB 1101, § 7.

**81-2279 Senior companion volunteers; benefits.**

Senior companion volunteers providing companion services pursuant to the Nebraska Senior Companion Volunteer Program Act shall receive (1) transportation expenses for transportation to and from their residences and the place where services are to be rendered, (2) one free meal when reasonably available during each day that services are rendered, and (3)(a) accident and liability insurance, (b) an annual physical examination, and (c) a nontaxable hourly stipend of two dollars and fifty-five cents per hour.

**Source:** Laws 2000, LB 1101, § 8.

**81-2280 Senior companion volunteers; assignment restrictions.**

Senior companion volunteers shall not be assigned to individuals already receiving in-home supportive services through the department or another entity of state or local government.

**Source:** Laws 2000, LB 1101, § 9.

**81-2281 Grants; amount; application; duration.**

- (1) The department shall make grants in an amount not to exceed fifty thousand dollars to direct service contractors and shall give preference to applications for grants to provide in-home services.
- (2) Applications shall be made on forms provided by the department.
- (3) No grant shall be approved for any applicant who has received federal funding to provide services under any federal senior companion program.
- (4) As a condition to receiving a grant, an applicant shall obtain at least ten percent matching funds from a local governmental or other source.

(5) Grants shall be for a period of twenty-four months and shall not be used as matching funds but solely to carry out the requirements of the Nebraska Senior Companion Volunteer Program Act.

(6) No person paid from grant funds shall replace any staff member of the grantee.

**Source:** Laws 2000, LB 1101, § 10.

**81-2282 Grantee; reports.**

Each grantee shall file with the department a quarterly report of its activities on forms provided by the department.

**Source:** Laws 2000, LB 1101, § 11.

**81-2283 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Senior Companion Volunteer Program Act.

**Source:** Laws 2000, LB 1101, § 12.

**ARTICLE 23**

**INTERGOVERNMENTAL DATA COMMUNICATIONS ACT**

Section	
81-2301.	Transferred to section 86-531.
81-2302.	Transferred to section 86-532.
81-2303.	Transferred to section 86-533.
81-2304.	Transferred to section 86-539.
81-2305.	Transferred to section 86-540.
81-2306.	Transferred to section 86-541.
81-2307.	Transferred to section 86-542.
81-2308.	Transferred to section 86-543.
81-2308.01.	Transferred to section 86-544.
81-2309.	Transferred to section 86-545.
81-2310.	Transferred to section 86-546.
81-2311.	Transferred to section 86-547.
81-2312.	Transferred to section 86-548.
81-2313.	Transferred to section 86-549.

**81-2301 Transferred to section 86-531.**

**81-2302 Transferred to section 86-532.**

**81-2303 Transferred to section 86-533.**

**81-2304 Transferred to section 86-539.**

**81-2305 Transferred to section 86-540.**

**81-2306 Transferred to section 86-541.**

**81-2307 Transferred to section 86-542.**

**81-2308 Transferred to section 86-543.**

**81-2308.01 Transferred to section 86-544.**

**81-2309 Transferred to section 86-545.**

**81-2310 Transferred to section 86-546.**

**81-2311 Transferred to section 86-547.**

**81-2312 Transferred to section 86-548.**

**81-2313 Transferred to section 86-549.**

**ARTICLE 24**

**PROMPT PAYMENT ACT**

Section

- 81-2401. Act, how cited.
- 81-2402. Terms, defined.
- 81-2403. Goods or services; payment in full; when required.
- 81-2404. Creditor; charge interest; when.
- 81-2405. Incorrect bill; notice to creditor; corrected bill; payment.
- 81-2406. Act, how construed.
- 81-2407. Act; applicability.
- 81-2408. Agency; reports; required.

**81-2401 Act, how cited.**

Sections 81-2401 to 81-2408 shall be known and may be cited as the Prompt Payment Act.

**Source:** Laws 1988, LB 1079, § 1.

**81-2402 Terms, defined.**

As used in the Prompt Payment Act, unless the context otherwise requires:

- (1) Agency shall mean the state and any agency, department, office, commission, board, panel, or division of the state;
- (2) Bill shall mean a proper billing or invoice which requests a payment and which is supplemented by all necessary verification and forms required by agency rules and regulations to process payments;
- (3) Creditor shall mean any person, corporation, association, or other business concern engaged in a trade or business, either on a for-profit or not-for-profit basis, and providing any goods or services to an agency;
- (4) Good faith dispute shall mean:
  - (a) A contention by the agency that goods delivered or services rendered were of less quantity or quality than ordered or specified by contract, faulty, or installed improperly; or
  - (b) Any other reason giving cause for the withholding of payment by the agency until the dispute is settled, except that failure to give notice as prescribed in section 81-2405 shall preclude an agency from claiming a good faith dispute in the case of a defective or improper billing;
- (5) Goods shall mean any goods, supplies, materials, equipment, or other personal property but shall not mean any real property; and
- (6) Services shall mean any contractual services, including, but not limited to, architectural, engineering, medical, financial consulting, or other professional services, any construction services, and any other personal services but shall not mean any services performed as an officer or employee of any agency.

**Source:** Laws 1988, LB 1079, § 2.

**81-2403 Goods or services; payment in full; when required.**

(1) Except as provided in subsection (2) of this section, each agency shall make payment in full for all goods delivered or services rendered on or before the forty-fifth calendar day after (a) the date of receipt by the agency of the goods or services or (b) the date of receipt by the agency of the bill for the goods or services, whichever is later, unless other provisions for payment are agreed to in writing by the creditor and the agency.

(2) Any agency making payment for goods or services provided for third parties shall make payment in full for such goods or services on or before the sixtieth calendar day after the date of receipt by the agency of the bill.

(3) No goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency. For purposes of determining whether payment was made in accordance with this section, payment in full by an agency shall be considered to be made on the date the warrant or check for such payment was mailed or otherwise transmitted.

**Source:** Laws 1988, LB 1079, § 3.

**81-2404 Creditor; charge interest; when.**

Any creditor of an agency not receiving payment in full for goods delivered or services rendered within the forty-five-day or sixty-day time period, whichever is applicable, may charge the agency interest on the unpaid principal balance at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. Interest charges shall begin to accrue on the thirty-first calendar day after (1) the date of receipt by the agency of the goods or services or (2) the date of receipt by the agency of the bill for the goods or services, whichever is later, and shall terminate on the date on which payment in full of the amount due is made. Each agency shall pay the interest charge upon request unless the bill is the subject of a good faith dispute between the agency and the creditor. No claim by a creditor for interest charges shall be allowed unless the agency is requested to pay the interest charges within ninety calendar days from the date on which payment in full is due.

**Source:** Laws 1988, LB 1079, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 42.

**81-2405 Incorrect bill; notice to creditor; corrected bill; payment.**

When a bill submitted to an agency is filled out incorrectly or when there is any defect or impropriety in a bill submitted, the agency shall notify the creditor in writing prior to the date on which payment in full is due. The notice shall contain a description of the defect or impropriety and any additional information necessary to enable the creditor to correct the bill. Upon receiving a properly corrected bill, the agency shall make payment in full of the bill on or before the forty-fifth calendar day after the receipt of the corrected bill or, when the agency is making payment for goods or services provided by a third party, on or before the sixtieth calendar day after the receipt of the corrected bill.

**Source:** Laws 1988, LB 1079, § 5.

**81-2406 Act, how construed.**

Nothing in the Prompt Payment Act shall be construed to prohibit full or partial payments by agencies for goods or services whether or not such goods or services have been completely received or finally accepted by the agencies.

**Source:** Laws 1988, LB 1079, § 6.

**81-2407 Act; applicability.**

The Prompt Payment Act shall not apply to the following:

- (1) Claims subject to a good faith dispute if notice of the dispute is conveyed to the creditor in writing before the time required for payment, except that the Prompt Payment Act shall take effect on the date that the dispute is resolved;
- (2) Contracts related to highway or road construction, reconstruction, or maintenance; and
- (3) Claims, contracts, or projects which are to be paid for exclusively with federal funds.

**Source:** Laws 1988, LB 1079, § 7.

**81-2408 Agency; reports; required.**

Each agency shall report monthly to the Director of Administrative Services and the Legislative Fiscal Analyst any account that has not been paid within the applicable time period prescribed by section 81-2403. Each agency shall report annually any interest charge on a past-due account, whether paid or unpaid, to the Governor and to the Appropriations Committee of the Legislature.

**Source:** Laws 1988, LB 1079, § 8.

**ARTICLE 25**

**COMMISSION ON INDIAN AFFAIRS**

Section

- 81-2501. Commission; members; qualifications; nomination; appointment; terms.
- 81-2502. Commission; purpose.
- 81-2503. Commission; legal entity; executive director; qualifications; office.
- 81-2504. Commission; functions.
- 81-2505. Commission; alcohol rehabilitation programs; participation.
- 81-2506. Commission; members; compensation; expenses.
- 81-2507. Commission; meetings; quorum; attendance required; exception.
- 81-2508. Commission; executive board; purpose; members; powers.

**81-2501 Commission; members; qualifications; nomination; appointment; terms.**

(1) There is hereby established the Commission on Indian Affairs. For purposes of sections 81-2501 to 81-2508, commission shall mean the Commission on Indian Affairs.

(2) The commission shall consist of fourteen members who shall be enrolled tribal members of a federally recognized Indian tribe residing within the State of Nebraska and from the following categories: Two from the Omaha Tribe reservation; two from the Winnebago Tribe reservation; two from the Santee Tribe reservation; two from the Ponca Tribe of Nebraska; one from the city of Lincoln; two from the city of Omaha; one from the district comprised of Sioux, Dawes, Sheridan, and Box Butte counties; one from the district comprised of Garden, Deuel, Cheyenne, Kimball, Banner, Morrill, and Scotts Bluff counties;

and one member at large. The commission may have such nonvoting, *ex officio* members as shall be appointed by the commission and who need not be of Indian ancestry. The commission shall elect one of its members as chairperson. Members of the commission shall serve four-year terms or for the unexpired term in the event of a vacancy, except that when making the initial appointments of members representing new categories or districts one-half of the members shall serve two-year terms and one-half of the members shall serve four-year terms. Members of the commission serving on September 6, 1991, shall serve until their terms expire.

(3) As the terms of the voting members expire, their successors shall be appointed by the Governor from a panel of nominees submitted by the group to be represented, with three names being submitted for each appointment to be made.

(a) Nominations for successors representing the Omaha Tribe reservation, the Winnebago Tribe reservation, and the Santee Tribe reservation shall be submitted by the respective tribal councils.

(b) The initial and subsequent nominations for appointment of members to represent the Ponca Tribe of Nebraska shall be made by the Tribal Council of the tribe.

(c) The initial and subsequent nominations for appointment of members representing the districts specified in subsection (2) of this section shall be made by separate panels comprised of five residents of each district. The composition and terms of membership on such panels shall be determined by the commission. Each panel shall be governed by rules and regulations established by the commission.

(d) Nominations for successors representing the cities of Lincoln and Omaha shall be governed by rules and regulations established by the commission to insure adequate representation for those American Indian residents of the respective cities.

(e) The initial and subsequent nominations for appointment of the member at large shall be governed by rules and regulations established by the commission to insure adequate representation for those Nebraska residents of American Indian ancestry not otherwise represented on the commission.

(f) Appointments for unexpired terms shall follow the same procedure as for initial and subsequent appointments. Voting members shall be eligible for reappointment.

**Source:** Laws 1971, LB 904, § 1; Laws 1973, LB 37, § 1; R.S.1943, (1987), § 81-1214; Laws 1991, LB 114, § 1; Laws 1992, LB 862, § 1.

**81-2502 Commission; purpose.**

The purpose of the commission shall be to join representatives of all Indians in Nebraska to do all things which it may determine to enhance the cause of Indian rights and to develop solutions to problems common to all Nebraska Indians.

**Source:** Laws 1971, LB 904, § 2; R.S.1943, (1987), § 81-1215.

**81-2503 Commission; legal entity; executive director; qualifications; office.**

The commission shall be a legal entity with the power to receive and administer funds from state, federal, tribal, and other sources, and to employ and fix the compensation of an executive director of its own choosing who shall be an enrolled member of a Nebraska tribe or a legal resident of the State of Nebraska of Indian descent. An office for the executive director shall be provided.

**Source:** Laws 1971, LB 904, § 3; Laws 1976, LB 986, § 8; R.S.1943, (1987), § 81-1216.

**81-2504 Commission; functions.**

The functions of the commission shall be to:

- (1) Promote state and federal legislation beneficial to the Indian community in Nebraska;
- (2) Coordinate existing programs relating to the Indian community in such areas as housing, education, welfare, medical and dental care, employment, economic development, law and order, and related problems;
- (3) Work with other state and federal government agencies and federal and state elected officials in the development of new programs in areas mentioned under subdivision (2) of this section;
- (4) Keep the Governor's office apprised of the situation in the Indian community;
- (5) Provide the public with information and education relevant to Indian affairs in the State of Nebraska; and
- (6) Develop programs to encourage the total involvement of Indian people in activities for the common benefit of the Indian community.

**Source:** Laws 1971, LB 904, § 4; R.S.1943, (1987), § 81-1217.

**81-2505 Commission; alcohol rehabilitation programs; participation.**

The Commission on Indian Affairs may participate in alcohol rehabilitation programs with any nonprofit organization.

**Source:** Laws 1976, LB 871, § 5; R.S.1943, (1987), § 23-362.04; Laws 1989, LB 5, § 4; R.S.1943, (1987), § 81-1217.01.

**81-2506 Commission; members; compensation; expenses.**

The members of the commission shall each receive fifty dollars for each day spent in the performance of their duties and shall receive reimbursement for any actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1971, LB 904, § 5; Laws 1973, LB 37, § 2; Laws 1981, LB 204, § 191; R.S.1943, (1987), § 81-1218; Laws 1991, LB 114, § 2.

**81-2507 Commission; meetings; quorum; attendance required; exception.**

(1) The commission shall meet at least once every calendar quarter. Meetings shall be held on the first Friday of January, April, July, and October. If such day is a holiday, or if the commission is prevented from meeting on such day, the meeting shall be held on the following Friday. Special meetings may be called at the request of eight voting members. Eight voting members of the commission shall constitute a quorum for the transaction of business.

(2) Any member of the commission who, without a valid excuse, fails to attend quarterly or special meetings shall be terminated as a member of the commission and a successor shall be appointed to complete the term of office.

**Source:** Laws 1971, LB 904, § 6; Laws 1973, LB 37, § 3; Laws 1976, LB 174, § 2; Laws 1979, LB 322, § 52; Laws 1981, LB 545, § 34; R.S.1943, (1987), § 81-1219; Laws 1992, LB 862, § 2.

**81-2508 Commission; executive board; purpose; members; powers.**

(1) For the purpose of administration of the Commission on Indian Affairs during the interim between its regular quarterly meetings, there is hereby established an executive board of the Commission on Indian Affairs consisting of the chairperson of the commission, two members representing the reservations or tribal service areas as defined in section 43-1503, one member representing the urban areas, and one member who represents the western Nebraska areas or is the member at large.

(2) The executive board shall have the authority to enter into contracts for consultation services, supplies, and equipment if the amount contracted for does not exceed the sum of two thousand dollars in any one contract, and to supervise all programs relating to the affairs of Indian tribes instituted and authorized by the commission.

**Source:** Laws 1976, LB 174, § 1; R.S.1943, (1987), § 81-1219.01; Laws 1999, LB 475, § 9.

**ARTICLE 26**

**GEOGRAPHIC INFORMATION SYSTEM**

Section

- 81-2601. Transferred to section 86-569.
- 81-2602. Transferred to section 86-570.
- 81-2603. Transferred to section 86-571.
- 81-2604. Transferred to section 86-572.
- 81-2605. Transferred to section 86-573.

**81-2601 Transferred to section 86-569.**

**81-2602 Transferred to section 86-570.**

**81-2603 Transferred to section 86-571.**

**81-2604 Transferred to section 86-572.**

**81-2605 Transferred to section 86-573.**

**ARTICLE 27**

**STATE GOVERNMENT EFFECTIVENESS ACT**

Section

- 81-2701. Act, how cited.
- 81-2702. Purpose of act.
- 81-2703. Terms, defined.
- 81-2704. Allegation of wrongdoing; investigation; confidentiality; report; Public Counsel or official; duties.
- 81-2705. Employee protections.
- 81-2706. Employee protections; Public Counsel; powers and duties.

## Section

- 81-2707. Employee protections; preliminary finding of violation; hearings; relief authorized; appeal; presumption; attorney's fees.
- 81-2708. Allegation of wrongdoing or violation of employee protection; official; powers.
- 81-2709. Employee; cause of action authorized; attorney's fees; presumption.
- 81-2710. Intentional misuse of act; disciplinary action.
- 81-2711. Employee rights and responsibilities; notice required.

**81-2701 Act, how cited.**

Sections 81-2701 to 81-2711 shall be known and may be cited as the State Government Effectiveness Act.

**Source:** Laws 1993, LB 44, § 1; Laws 2005, LB 475, § 2.

**81-2702 Purpose of act.**

The primary purpose of the State Government Effectiveness Act is to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in state government to elected state officials or the Public Counsel and to prohibit reprisals for such disclosures by state employees.

The Legislature finds and declares that it is in the vital interest of the people of this state that their government operate in accordance with the law and without fraud, waste, or mismanagement. If this interest is to be protected, public officials and employees must work in a climate where conscientious service is encouraged and disclosures of illegalities or improprieties may be made without reprisal or fear of reprisal.

**Source:** Laws 1993, LB 44, § 2.

**81-2703 Terms, defined.**

For purposes of the State Government Effectiveness Act:

(1) Agency shall mean any agency, department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his or her personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government;

(2) Employee shall mean any person employed by an agency, regardless of rank;

(3) Official shall mean any elected state official;

(4) Personnel action shall include dismissing, demoting, transferring, reassigning, suspending, reprimanding, admonishing, reducing in rank, or reclassifying an employee, withholding work from an employee of an agency, requiring an employee to submit to a fitness-for-duty examination or take disability retirement, any other involuntary action taken against an employee, or any threat thereof made against an employee; and

(5) Wrongdoing shall include any action by an agency or employee which (a) is a violation of any law, (b) results in gross mismanagement or gross waste of funds, or (c) creates a substantial and specific danger to public health or safety.

**Source:** Laws 1993, LB 44, § 3.

**81-2704 Allegation of wrongdoing; investigation; confidentiality; report; Public Counsel or official; duties.**

(1) Within thirty working days after receiving a written allegation of wrongdoing from an employee, the Public Counsel or official may conduct a preliminary investigation and determine whether reasonable grounds exist to support the employee's allegation. The Public Counsel or official may consider the following factors in considering whether to proceed with a preliminary investigation:

(a) The employee has available to him or her another remedy which the employee could reasonably be expected to use;

(b) The complaint pertains to a matter outside the Public Counsel's or official's power;

(c) The complaint is trivial, frivolous, vexatious, or not made in good faith or has been delayed too long to justify present examination of its merit;

(d) Other complaints are more worthy of attention; or

(e) The Public Counsel's or official's resources are insufficient for adequate investigation.

(2) The identity of the employee presenting the allegation shall not be disclosed by the Public Counsel, his or her investigators, employees, or agents, or the official without the employee's prior written consent.

(3) When the Public Counsel or official finds reason to believe that reasonable grounds exist to support the employee's allegation of wrongdoing, the Public Counsel may conduct a formal investigation. The Public Counsel shall inform the employee of his or her intent to conduct a formal investigation. Upon the request of the Public Counsel, the director or chief operating officer of the agency which is the subject of the allegation shall cooperate in the investigation of the allegation and any related matters. Upon the conclusion of his or her formal investigation, the Public Counsel shall prepare a report of his or her findings.

(4) Any report prepared pursuant to subsection (3) of this section shall be transmitted to the director or chief operating officer of the agency which is the subject of the allegation, or if the allegation and report are directed against a director or chief operating officer, the report shall be transmitted to the Governor, to his or her authorized representative, or to the appropriate board or commission that has governing authority over the director or chief operating officer. The report may include, but need not be limited to, any or all of the following:

(a) A summary of the information received before the formal investigation was initiated;

(b) A description of the conduct of the formal investigation;

(c) A summary of any evidence obtained from the formal investigation;

(d) A listing of any violation or apparent violation of any law, rule, regulation, or agency policy or practice; or

(e) A description of any action taken or recommended as a result of the investigation including, but not limited to:

- (i) Changes in agency rules, regulations, practices, or policies;
- (ii) Disciplining the employees involved; or
- (iii) Referring evidence of a criminal violation to the Attorney General.

(5) A copy of every report prepared pursuant to subsection (3) of this section shall be retained in the files of the Public Counsel. If the contents of the report indicate a wrongdoing exists or has occurred, the report shall become a matter of public record at the time it is transmitted pursuant to subsection (4) of this section unless the Public Counsel determines its release would impede an ongoing investigation.

(6) When the Public Counsel terminates a preliminary investigation or when the Public Counsel terminates a formal investigation of an allegation of wrongdoing, the Public Counsel shall, in writing, promptly notify the employee who made the allegation.

**Source:** Laws 1993, LB 44, § 4; Laws 1995, LB 856, § 1.

#### **81-2705 Employee protections.**

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the Public Counsel or an official which the employee reasonably believes evidences wrongdoing;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing or a violation of this section to the Public Counsel or official by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony, pursuant to an investigation or hearing held under the State Government Effectiveness Act, to the Public Counsel, an official, the State Personnel Board, a corresponding personnel appeals board, or the director or chief operating officer of an agency.

**Source:** Laws 1993, LB 44, § 5.

#### **81-2706 Employee protections; Public Counsel; powers and duties.**

(1) The Public Counsel shall receive any allegation of a violation of section 81-2705 and investigate to determine whether there are grounds to believe that a violation has occurred or is about to occur.

(2) When investigating an allegation of a violation of section 81-2705, the Public Counsel shall have access to all information maintained by any agency or employee directly or indirectly involved.

(3) If the Public Counsel terminates the investigation of an alleged violation of section 81-2705, the Public Counsel shall, in writing, promptly inform the employee who raised the allegation.

(4) If the Public Counsel finds that there are grounds to believe by a preponderance of the evidence that a violation of section 81-2705 has occurred or is about to occur, he or she shall transmit his or her finding in writing to the employee who raised the allegation. The Public Counsel shall also transmit his or her finding in writing to the Governor and (a) the State Personnel Board if

the employee is employed by an agency that is subject to the State Personnel System or (b) the personnel appeals board of the employee's agency if the employee is employed by an agency that is not subject to the state personnel system. If no such personnel appeals board exists, the Public Counsel shall transmit his or her finding to the director or chief operating officer of the agency, or if the director or chief operating officer has committed or is about to commit the violation of section 81-2705, the finding shall be transmitted to the Governor or his or her authorized representative.

(5) Any finding that is made and transmitted by the Public Counsel pursuant to subsection (4) of this section shall include a finding regarding whether an alleged violation of section 81-2705 has occurred or will occur within two years after the date the employee engaged in an action for which he or she is protected from retaliation pursuant to section 81-2705.

**Source:** Laws 1993, LB 44, § 6; Laws 1995, LB 856, § 2; Laws 1997, LB 15, § 1.

**81-2707 Employee protections; preliminary finding of violation; hearings; relief authorized; appeal; presumption; attorney's fees.**

(1) Upon receiving the Public Counsel's finding that a violation of section 81-2705 has occurred or is about to occur, the employee who raised the allegation may petition the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency to hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. Upon the receipt of such a petition, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall within ninety days hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. If the finding transmitted by the Public Counsel pursuant to section 81-2706 includes a finding that the alleged violation of section 81-2705 has occurred or will occur within two years after the date the employee engaged in an action for which he or she is protected from retaliation pursuant to section 81-2705, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency may, without further proceedings, stay or reverse the personnel action until a hearing can be held to determine if a violation of section 81-2705 is contemplated or has occurred. In any case in which the personnel action is not stayed or reversed until a hearing is held pursuant to this subsection, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall within ten days of receipt of the employee's petition hold a hearing to determine whether a violation of section 81-2705 has occurred or is about to occur. In any case in which the personnel action is stayed or reversed pursuant to this subsection, the board, director, or chief operating officer shall within ninety days hold a hearing to determine whether a violation has occurred or is about to occur. The employee may be represented by counsel at such hearing.

(2) After determining that a violation has occurred, the State Personnel Board, personnel appeals board, or director or chief operating officer of the agency shall be authorized to grant backpay or other relief as it deems appropriate, including reasonable attorney's fees. The relief authorized in this subsection, including reasonable attorney's fees, shall be paid from funds of the agency in which the violation occurred.

(3) An employee or agency aggrieved by the decision rendered pursuant to subsection (2) of this section may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act. An employee prevailing on appeal shall receive reasonable attorney's fees incurred during the appeal and any previous hearings held on the matter appealed pursuant to this section.

(4) In any proceeding held pursuant to this section, if an employee establishes that a personnel action was taken against him or her after he or she submitted an allegation of wrongdoing or provided information to the Public Counsel, his or her investigators, employees, or agents, or an official in conjunction with a preliminary or formal investigation undertaken pursuant to section 81-2704, the personnel action shall be presumed to have been taken against such employee because of such allegation. Such presumption may be rebutted by appropriate evidence.

(5) No appeal by the state shall operate as a supersedeas of any judgment, decision, or order of a district court or the Court of Appeals in any matter relating to the enforcement of the State Government Effectiveness Act.

**Source:** Laws 1993, LB 44, § 7; Laws 1995, LB 856, § 3; Laws 1997, LB 15, § 2.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **81-2708 Allegation of wrongdoing or violation of employee protection; official; powers.**

An official who receives an allegation of wrongdoing or of a violation of section 81-2705 may conduct a preliminary investigation of such allegation or submit such allegation to the Public Counsel for investigation pursuant to section 81-2704 or 81-2706. A copy of any written findings issued by the Public Counsel pursuant to such an investigation shall be transmitted to the official submitting the allegation.

**Source:** Laws 1993, LB 44, § 8.

### **81-2709 Employee; cause of action authorized; attorney's fees; presumption.**

(1) An employee aggrieved by the decision rendered pursuant to subsection (1) of section 81-2707 who has been or is about to be injured by a violation of section 81-2705 shall be entitled to maintain a cause of action pursuant to the Administrative Procedure Act for damages, reinstatement, backpay, and such other relief, including preliminary relief, as the court may deem appropriate. An employee who prevails in an action under this subsection shall receive reasonable attorney's fees incurred during the action.

(2) In an action brought pursuant to subsection (1) of this section by an employee who establishes that a personnel action was taken against him or her after he or she submitted an allegation of wrongdoing or provided information to the Public Counsel, his or her investigators, employees, or agents, or an official in conjunction with a preliminary or formal investigation undertaken pursuant to section 81-2704, the personnel action shall be presumed to have been taken against such employee because of such allegation. Such presumption may be rebutted by appropriate evidence.

**Source:** Laws 1993, LB 44, § 9.

## Cross References

Administrative Procedure Act, see section 84-920.

**81-2710 Intentional misuse of act; disciplinary action.**

No employee shall intentionally misuse the State Government Effectiveness Act. Intentional misuse shall include frivolous use, attempts to treat a personnel grievance as an allegation of wrongdoing, and repeated attempts to use such procedures to obtain a resolution of views that do not satisfy the criteria prescribed in subdivision (5) of section 81-2703 for allegations of wrongdoing. The Public Counsel or official may report to the agency any employee found by the Public Counsel or official to have intentionally misused the act, and such employee may be subject to such disciplinary action as is deemed appropriate by the director or chief operating officer of the employee's agency.

**Source:** Laws 1993, LB 44, § 10.

**81-2711 Employee rights and responsibilities; notice required.**

(1) By December 31, 2005, the Public Counsel shall prepare for agencies a written notice of the rights and responsibilities of employees under the State Government Effectiveness Act. By January 31, 2006, the Public Counsel shall distribute the written notice to each agency.

(2) Beginning January 31, 2006, each agency shall post the notice in a conspicuous manner at the place of employment. Each agency shall inform its employees of their rights and responsibilities under the State Government Effectiveness Act by distributing the notice to each employee in print or electronic format.

**Source:** Laws 2005, LB 475, § 1.

**ARTICLE 28**

**RAILROAD RIGHT-OF-WAY**

Section

81-2801. Railroad right-of-way; acquisition by state agency; approval of Legislature; exception.

**81-2801 Railroad right-of-way; acquisition by state agency; approval of Legislature; exception.**

No agency of this state shall purchase, lease, or acquire real estate from any railroad over a right-of-way outside of incorporated cities and villages which has been permitted to be abandoned by a federal agency without prior approval by the Legislature of such purchase, lease, or acquisition, except that (1) the Game and Parks Commission may acquire all or any part of a railroad right-of-way proposed to be abandoned for interim trail use pursuant to sections 37-303 and 37-914 and (2) the Department of Roads may acquire such real estate solely for the purpose of highway construction or improvements when such right-of-way is adjacent to an existing state highway or when such right-of-way is needed to maintain existing improvements that have previously been located upon such right-of-way through agreements, easements, or leases. Real estate acquired by the department pursuant to this section which is in excess of that needed or is deemed no longer necessary shall be disposed of as provided for in section 39-1325.

**Source:** Laws 1971, LB 662, § 2; Laws 1983, LB 119, § 1; R.S.1943, (1990), § 74-424; Laws 1994, LB 414, § 4; Laws 1996, LB 584, § 21; Laws 1998, LB 922, § 410.

**ARTICLE 29**  
**STATE CIVIL OFFICERS**

## Section

81-2901. State civil offices; vacancy; how filled.

**81-2901 State civil offices; vacancy; how filled.**

Every state civil office filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in section 32-567 and shall be subject to section 32-563.

**Source:** Laws 1994, LB 76, § 609.

**ARTICLE 30**  
**NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM ACT**

## Section

81-3001. Repealed. Laws 2007, LB 296, § 815.  
 81-3001.01. Repealed. Laws 2007, LB 296, § 815.  
 81-3002. Repealed. Laws 2003, LB 467, § 22.  
 81-3002.01. Repealed. Laws 2003, LB 467, § 22.  
 81-3003. Repealed. Laws 2003, LB 467, § 22.  
 81-3004. Repealed. Laws 2007, LB 296, § 815.  
 81-3005. Repealed. Laws 2003, LB 467, § 22.  
 81-3006. Repealed. Laws 2007, LB 296, § 815.  
 81-3007. Repealed. Laws 2003, LB 467, § 22.  
 81-3007.01. Repealed. Laws 2007, LB 296, § 815.  
 81-3008. Repealed. Laws 2007, LB 296, § 815.  
 81-3009. Repealed. Laws 2007, LB 296, § 815.  
 81-3010. Repealed. Laws 2003, LB 467, § 22.  
 81-3011. Repealed. Laws 2003, LB 467, § 22.  
 81-3012. Repealed. Laws 2003, LB 467, § 22.  
 81-3013. Repealed. Laws 2003, LB 467, § 22.  
 81-3014. Repealed. Laws 2003, LB 467, § 22.

**81-3001 Repealed. Laws 2007, LB 296, § 815.**

**81-3001.01 Repealed. Laws 2007, LB 296, § 815.**

**81-3002 Repealed. Laws 2003, LB 467, § 22.**

**81-3002.01 Repealed. Laws 2003, LB 467, § 22.**

**81-3003 Repealed. Laws 2003, LB 467, § 22.**

**81-3004 Repealed. Laws 2007, LB 296, § 815.**

**81-3005 Repealed. Laws 2003, LB 467, § 22.**

**81-3006 Repealed. Laws 2007, LB 296, § 815.**

**81-3007 Repealed. Laws 2003, LB 467, § 22.**

**81-3007.01 Repealed. Laws 2007, LB 296, § 815.**

**81-3008 Repealed. Laws 2007, LB 296, § 815.**

**81-3009 Repealed. Laws 2007, LB 296, § 815.**

**81-3010 Repealed. Laws 2003, LB 467, § 22.**

**81-3011 Repealed. Laws 2003, LB 467, § 22.**

**81-3012 Repealed. Laws 2003, LB 467, § 22.**

**81-3013 Repealed. Laws 2003, LB 467, § 22.**

**81-3014 Repealed. Laws 2003, LB 467, § 22.**

### ARTICLE 31

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Cross References

Uniform Credentialing Act, see section 38-101.

#### Section

- 81-3101. Repealed. Laws 2007, LB 296, § 815.
- 81-3102. Repealed. Laws 2007, LB 296, § 815.
- 81-3103. Repealed. Laws 2007, LB 296, § 815.
- 81-3104. Repealed. Laws 2003, LB 467, § 22.
- 81-3105. Repealed. Laws 2003, LB 467, § 22.
- 81-3106. Repealed. Laws 2007, LB 296, § 815.
- 81-3107. Repealed. Laws 2007, LB 296, § 815.
- 81-3108. Repealed. Laws 2007, LB 296, § 815.
- 81-3109. Repealed. Laws 2007, LB 296, § 815.
- 81-3110. Act, how cited.
- 81-3111. Purposes of act.
- 81-3112. Programs, services, and duties transferred to Department of Health and Human Services.
- 81-3113. Department of Health and Human Services created; divisions.
- 81-3114. Chief executive officer; qualifications.
- 81-3115. Division directors; appointment; chief medical officer; duties.
- 81-3116. Responsibilities of divisions.
- 81-3117. Chief executive officer; duties.
- 81-3118. Confidential information; how treated; duties.
- 81-3119. Health and Human Services Cash Fund; created; investment.
- 81-3120. Petty cash funds authorized.
- 81-3121. Contracts, documents, funds, and records of departments transferred to Department of Health and Human Services; how treated.
- 81-3122. Rules, regulations, orders, judicial or administrative proceedings, and references in law; how treated.
- 81-3123. Employees of departments transferred to Department of Health and Human Services; how treated.
- 81-3124. Property of departments transferred to Department of Health and Human Services; how treated.
- 81-3125. Personnel who work with sex offenders; duties; department; maintain records; contents.
- 81-3126. Chief executive officer; disclosure of information relating to certain children authorized; limitations; release of criminal history record check results.

**81-3101 Repealed. Laws 2007, LB 296, § 815.**

**81-3102 Repealed. Laws 2007, LB 296, § 815.**

**81-3103 Repealed. Laws 2007, LB 296, § 815.**

**81-3104 Repealed. Laws 2003, LB 467, § 22.**

**81-3105 Repealed. Laws 2003, LB 467, § 22.**

**81-3106 Repealed. Laws 2007, LB 296, § 815.**

**81-3107 Repealed. Laws 2007, LB 296, § 815.**

**81-3108 Repealed. Laws 2007, LB 296, § 815.**

**81-3109 Repealed. Laws 2007, LB 296, § 815.**

**81-3110 Act, how cited.**

Sections 81-3110 to 81-3124 shall be known and may be cited as the Health and Human Services Act.

**Source:** Laws 2007, LB296, § 1.

**81-3111 Purposes of act.**

The purposes of the Health and Human Services Act are to (1) provide for the administration of publicly funded health and human services programs and services in the State of Nebraska through the Department of Health and Human Services; (2) transfer programs, services, and duties of the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support to a single state agency to be known as the Department of Health and Human Services; (3) create six divisions within the Department of Health and Human Services; (4) require the appointment by the Governor of a single chief executive officer for the department, a director for each of the six divisions of the department, and a chief medical officer; and (5) clarify the department's core missions, scope, functions, and responsibilities; ensure and improve accountability, collaboration, and coordination; and enhance services provided to Nebraskans by the department.

**Source:** Laws 2007, LB296, § 2.

**81-3112 Programs, services, and duties transferred to Department of Health and Human Services.**

Effective July 1, 2007, all programs, services, and duties of the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support shall be transferred to the Department of Health and Human Services.

**Source:** Laws 2007, LB296, § 3.

**81-3113 Department of Health and Human Services created; divisions.**

The Department of Health and Human Services is created. The department shall have six divisions to be known as (1) the Division of Behavioral Health, (2) the Division of Children and Family Services, (3) the Division of Developmental Disabilities, (4) the Division of Medicaid and Long-Term Care, (5) the Division of Public Health, and (6) the Division of Veterans' Homes.

**Source:** Laws 2007, LB296, § 4.

**81-3114 Chief executive officer; qualifications.**

The Governor shall appoint the chief executive officer of the Department of Health and Human Services who shall have recognized and demonstrated knowledge and expertise in the delivery of publicly funded health and human services programs and services and administrative experience in an executive capacity. The chief executive officer shall report to the Governor and serve at the pleasure of the Governor. The chief executive officer shall be subject to confirmation by a majority vote of the members of the Legislature.

**Source:** Laws 2007, LB296, § 5.

**81-3115 Division directors; appointment; chief medical officer; duties.**

(1) The Governor shall appoint a director for each division created in section 81-3113 who shall serve at the pleasure of the Governor and shall report to the chief executive officer. Each division director shall be subject to confirmation by a majority of the members of the Legislature.

(2) If the Director of Public Health is licensed to practice medicine and surgery in the State of Nebraska, he or she shall also be the chief medical officer. If the Director of Public Health is not licensed to practice medicine and surgery in the State of Nebraska, the Governor shall appoint a chief medical officer in addition to the Director of Public Health. The chief medical officer shall be licensed to practice medicine and surgery in the State of Nebraska, shall serve at the pleasure of the Governor, and shall be subject to confirmation by a majority of the members of the Legislature.

(3) The chief medical officer shall perform duties under the Uniform Credentialing Act as provided in section 38-1,101, shall be the final decisionmaker in contested cases of health care facilities defined in the Health Care Facility Licensure Act arising under the act and sections 71-6042, 71-6732, and 81-604.03, and shall perform such other duties as provided by law.

**Source:** Laws 2007, LB296, § 6; Laws 2007, LB463, § 1315.

**Cross References**

**Health Care Facility Licensure Act**, see section 71-401.

**Uniform Credentialing Act**, see section 38-101.

**81-3116 Responsibilities of divisions.**

The responsibilities of the divisions created in section 81-3113 include, but are not limited to, the following:

(1) The Division of Behavioral Health shall administer (a) the state hospitals for the mentally ill designated in section 83-305 and (b) publicly funded community-based behavioral health services;

(2) The Division of Children and Family Services shall administer (a) protection and safety programs and services, including child welfare programs and services and the Office of Juvenile Services, (b) economic and family support programs and services, and (c) service areas as may be designated by the chief executive officer or by the Director of Children and Family Services under authority of the chief executive officer;

(3) The Division of Developmental Disabilities shall administer (a) the Beatrice State Developmental Center and (b) publicly funded community-based developmental disabilities services;

(4) The Division of Medicaid and Long-Term Care shall administer (a) the medical assistance program also known as medicaid, (b) aging services, and (c) other related programs and services;

(5) The Division of Public Health shall administer (a) preventive and community health programs and services, (b) the regulation and licensure of health-related professions and occupations, and (c) the regulation and licensure of health care facilities and health care services; and

(6) The Division of Veterans' Homes shall administer (a) the Eastern Nebraska Veterans' Home, (b) the Grand Island Veterans' Home, (c) the Norfolk Veterans' Home, and (d) the Western Nebraska Veterans' Home.

**Source:** Laws 2007, LB296, § 7.

**81-3117 Chief executive officer; duties.**

The chief executive officer of the Department of Health and Human Services shall:

(1) Supervise and be responsible for the administration of the department and the appointment and removal of employees;

(2) Manage services and programs of the department, whether contracted or delivered directly by the state, including, but not limited to: (a) Delegating appropriate powers and duties to division directors and employees of the department; (b) assuring coordination throughout the department for consumers of services; (c) providing services in accordance with established policies, desired outcomes, priorities, and goals; (d) identifying strategies jointly with communities for accomplishing identified goals and outcomes; and (e) assuring service coordination and access through public education and information, community resource development, technical assistance, and coordinated service management;

(3) Enter into such agreements as may be necessary or appropriate to provide services and manage funds as provided under the Health and Human Services Act, including the administration of federal funds granted to the state in the furtherance of the activities of the department;

(4) Allow for the transfer of personnel and for the authority of one division of the department to act as the agent for another division of the department in carrying out certain services or functions, or a portion of them, or for the joint implementation of public or private grants or performance of contracts;

(5) Recommend to the Legislature and the Governor legislation he or she deems necessary or appropriate;

(6) Consult and cooperate with other state agencies so as to coordinate activities in an effective manner with related activities in other agencies;

(7) Adopt and promulgate necessary rules and regulations to implement programs and activities as required by state law or under federal law or regulation governing federal funds, grants, or contracts administered by the department. The authority to adopt and promulgate rules and regulations may be delegated by the chief executive officer to the division directors of the department;

(8) Under the direction and guidance of the Adjutant General and the Nebraska Emergency Management Agency, to coordinate assistance programs

established by the Adjutant General under section 81-829.72 with the programs of the department;

(9) Coordinate budget, research, and data collection efforts to insure effectiveness of the department;

(10) Ensure that the Appropriations Committee of the Legislature is provided any information the committee requires to make funding determinations and budget recommendations to the Legislature, including, but not limited to, specific program budgets, internal budget requests, fiscal reports, and appearances by division directors, division administrators, program administrators, and subprogram directors before the committee to present department, division, program, and subprogram budget requests;

(11) Seek grants and other funds from federal and other public and private sources to carry out the purposes of the act and the missions and purposes of the department and to accept and administer programs or resources delegated, designated, assigned, or awarded by the Governor or by other public and private sources;

(12) Act as the agent of the federal government in matters of mutual concern in conformity with the Health and Human Services Act and the scope of authority of the department as provided by law;

(13) Facilitate joint planning initiatives in the department;

(14) Adopt and promulgate confidentiality rules and regulations as provided in section 81-3118;

(15) Delegate the authority to act as decisionmaker in contested cases to the division directors;

(16) Encourage and direct initiatives and collaboration in the department; and

(17) Perform such other duties as are provided by law.

**Source:** Laws 2007, LB296, § 8.

**81-3118 Confidential information; how treated; duties.**

(1) The chief executive officer of the Department of Health and Human Services may adopt and promulgate rules and regulations which prescribe standards and procedures for access to and security of confidential information among the divisions within the department and within each division. These include standards for collection, maintenance, and use of information in electronic or other storage media. Procedures for disclosure of confidential information among the divisions shall include a determination by the chief executive officer on whether confidential information should be shared among the divisions. In making the determination, the following factors shall be considered:

(a) The law governing the confidentiality of the information and the original purpose for which the information was collected;

(b) The potential for harm to an individual if the disclosure is made;

(c) Whether the disclosure will enhance the coordination of policy development, service provision, eligibility determination, program management, quality assurance, financial services, or support services;

(d) Whether the information is a trade secret, academic or scientific research work which is in progress and unpublished, or other proprietary or commercial information;

(e) Any limitations placed on the use of the information by the original source of the information;

(f) Whether the proposed use is for a bona fide research project or study, the procedures and methodology of which meet the standards for research in the particular body of knowledge;

(g) The security of the information, including the scope of access, ongoing security, publication, and disposal of the information at the end of its use;

(h) The degree to which aggregate or summary data may identify an individual whose privacy would otherwise be protected; and

(i) Whether such information constitutes criminal intelligence information maintained by correctional or law enforcement authorities.

(2) Otherwise confidential information may be disclosed among the divisions pursuant to subsection (1) of this section if not expressly prohibited by law. Such disclosure shall not be considered a public disclosure or make the record a public record. Any further disclosure may be made only if permitted by law or a policy governing the originating division. Each division shall observe confidentiality of human resources information and employment records, except that the divisions shall act and be considered to be one agency for purposes of human resources issues, employment records, and related matters.

(3) All officials and employees shall be informed regarding laws, rules and regulations, and policies governing confidential information and acknowledge receipt of that information.

**Source:** Laws 2007, LB296, § 9.

#### **81-3119 Health and Human Services Cash Fund; created; investment.**

The Health and Human Services Cash Fund is created and shall consist of funds from contracts, grants, gifts, or fees. On or before July 15, 2008, one million dollars shall be transferred from the Health and Human Services Cash Fund to the Rural Health Professional Incentive Fund. Any money in the Health and Human Services 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.

**Source:** Laws 2007, LB296, § 10; Laws 2008, LB961, § 6.

Operative date April 3, 2008.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **81-3120 Petty cash funds authorized.**

The chief executive officer of the Department of Health and Human Services may request that petty cash funds be created at specific locations which may be used for fees and costs related to the prosecution of support establishment, modification, and enforcement cases, including, but not limited to, court costs, filing fees, service of process fees, sheriff's costs, garnishment and execution fees, court reporter and transcription costs, costs related to appeals, witness and expert witness fees, and fees or costs for obtaining necessary documents.

The petty cash funds shall be created and administered as provided in section 81-104.01, except that the amount in each petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

**Source:** Laws 2007, LB296, § 11.

**81-3121 Contracts, documents, funds, and records of departments transferred to Department of Health and Human Services; how treated.**

On and after July 1, 2007, whenever the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act, such reference or designation shall apply to such department. All contracts entered into by the agencies prior to July 1, 2007, in connection with the duties and functions transferred to the department are hereby recognized, with the department succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department for the payments of such obligations. All licenses, certificates, registrations, permits, seals, or other forms of approval issued by the departments in accordance with functions or duties transferred to the department shall remain valid as issued under the names of the original departments unless revoked or their effectiveness is otherwise terminated as provided by law. All documents and records transferred, or copies of the same, may be authenticated or certified by the department for all legal purposes.

**Source:** Laws 2007, LB296, § 12.

**81-3122 Rules, regulations, orders, judicial or administrative proceedings, and references in law; how treated.**

All rules, regulations, and orders of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure or their predecessor agencies adopted prior to July 1, 2007, in connection with the powers, duties, and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2007, or which could have been commenced prior to that date, by or against any of such departments, or any director or employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure to the Department of Health and Human Services.

On and after July 1, 2007, unless otherwise specified, whenever any provision of law refers to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of

Health and Human Services Regulation and Licensure in connection with duties and functions transferred to the Department of Health and Human Services, such law shall be construed as referring to such department.

**Source:** Laws 2007, LB296, § 13.

**81-3123 Employees of departments transferred to Department of Health and Human Services; how treated.**

On and after July 1, 2007, positions of employment in the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, and the Department of Health and Human Services Regulation and Licensure related to the powers, duties, and functions transferred pursuant to the Health and Human Services Act are transferred to the Department of Health and Human Services. For purposes of the transition, employees of the former departments shall be considered employees of the Department of Health and Human Services and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the divisions or the chief executive officer of the Department of Health and Human Services from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

**Source:** Laws 2007, LB296, § 14.

**81-3124 Property of departments transferred to Department of Health and Human Services; how treated.**

On July 1, 2007, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, and the Department of Health and Human Services Regulation and Licensure pertaining to the duties and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act shall become the property of such department.

**Source:** Laws 2007, LB296, § 15.

**81-3125 Personnel who work with sex offenders; duties; department; maintain records; contents.**

(1) The personnel of the Department of Health and Human Services who work with sex offenders shall develop, maintain, and adhere to written policies or administrative rules and regulations governing the transfer and discharge of sex offenders treated in a program of the department. At a minimum, the policies or rules and regulations shall contain:

(a) Specific requirements regarding treatment that sex offenders are required to meet in order to be transferred from one sex offender treatment unit to another or to be discharged from treatment; and

(b) A list of the personnel of the department who are required to review and document their opinions regarding the treatment progress of each sex offender prior to his or her transfer or discharge.

(2) The department shall maintain, along with each sex offender's permanent medical records, complete treatment records for sex offenders treated in a program of the department, including documentation of the reason behind transfer and discharge decisions. At a minimum, each sex offender's records shall contain:

- (a) Detailed documentation that the sex offender has or has not met the requirements for transfer or discharge; and
- (b) Signed comments from all personnel of the department required to review the sex offender's treatment progress prior to his or her transfer or discharge.

**Source:** Laws 2007, LB610, § 1.

**81-3126 Chief executive officer; disclosure of information relating to certain children authorized; limitations; release of criminal history record check results.**

(1) For purposes of this section:

- (a) Chief executive officer means the chief executive officer of the Department of Health and Human Services;
- (b) Child abuse or neglect has the same meaning as in section 28-710;
- (c) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;
- (d) Department means the Department of Health and Human Services;
- (e) Director means the Director of Children and Family Services;
- (f) Division means the Division of Children and Family Services of the Department of Health and Human Services; and
- (g) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(2) Notwithstanding any other provision of state law, the chief executive officer or director may disclose information regarding child abuse or neglect and the investigation of and any services related to the child abuse and neglect if the chief executive officer or director determines that such disclosure is not contrary to the best interests of the child, the child's siblings, or other children in the household, and any one of the following factors is present:

- (a) The alleged perpetrator of the child abuse or neglect has been charged with committing a crime related to the report of child abuse or neglect maintained by the division;
- (b) A judge, a law enforcement agency official, a county attorney, or another state or local investigative agency or official has publicly disclosed the provision of services related to or the investigation of the child abuse or neglect;
- (c) An individual who is the parent, custodian, foster parent, provider, or guardian of the victim or a child victim over fourteen years of age has made a prior knowing, voluntary, public disclosure;
- (d) The information relates to a child fatality or near fatality;
- (e) The information is released to confirm, clarify, or correct information concerning an allegation or actual instance of child abuse or neglect which has been made public by sources outside the department; or

(f) A child who is in the custody of the department is missing from his or her placement, in which case the chief executive officer or director may release the name and physical description of the child.

(3) Information that may be disclosed includes, but is not limited to, child placement, whether in-home or out-of-home, terms of contact, hearing dates, the reason for removal from parents or placement, the number of placements and type, permanency objectives, court-ordered services or other services provided by the division, and status of the court process. The following information shall not be released by the chief executive officer or director absent a court order: Date of birth, social security number, protected health information, the name of the person who made the report of child abuse or neglect pursuant to section 28-711, and names of foster parents, unless the foster parent is the alleged perpetrator.

(4) The chief executive officer or director may release the results of criminal history record checks that have been completed by the division as authorized by law.

(5) For purposes of this section, the best interests of the child, the child's siblings, or other children in the household does not allow the disclosure of information that would impede a pending or current criminal investigation by a law enforcement agency.

(6) The division may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2008, LB782, § 1.  
Effective date March 11, 2008.

**ARTICLE 32**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
REGULATION AND LICENSURE**

- Section
- 81-3201. Repealed. Laws 2007, LB 296, § 815.
- 81-3202. Repealed. Laws 2007, LB 296, § 815.
- 81-3203. Repealed. Laws 2007, LB 296, § 815.
- 81-3204. Repealed. Laws 2003, LB 467, § 22.
- 81-3205. Repealed. Laws 2003, LB 467, § 22.
- 81-3206. Repealed. Laws 2007, LB 296, § 815.
- 81-3207. Repealed. Laws 2007, LB 296, § 815.
- 81-3208. Repealed. Laws 2007, LB 296, § 815.
- 81-3209. Repealed. Laws 2007, LB 296, § 815.
- 81-3210. Repealed. Laws 2007, LB 296, § 815.
- 81-3211. Repealed. Laws 2007, LB 296, § 815.

**81-3201 Repealed. Laws 2007, LB 296, § 815.**

**81-3202 Repealed. Laws 2007, LB 296, § 815.**

**81-3203 Repealed. Laws 2007, LB 296, § 815.**

**81-3204 Repealed. Laws 2003, LB 467, § 22.**

**81-3205 Repealed. Laws 2003, LB 467, § 22.**

**81-3206 Repealed. Laws 2007, LB 296, § 815.**

**81-3207 Repealed. Laws 2007, LB 296, § 815.**

**81-3208 Repealed. Laws 2007, LB 296, § 815.**

**81-3209 Repealed. Laws 2007, LB 296, § 815.**

**81-3210 Repealed. Laws 2007, LB 296, § 815.**

**81-3211 Repealed. Laws 2007, LB 296, § 815.**

**ARTICLE 33**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES FINANCE AND SUPPORT**

Section

- 81-3301. Repealed. Laws 2007, LB 296, § 815.
- 81-3302. Repealed. Laws 2007, LB 296, § 815.
- 81-3303. Repealed. Laws 2007, LB 296, § 815.
- 81-3304. Repealed. Laws 2003, LB 467, § 22.
- 81-3305. Repealed. Laws 2003, LB 467, § 22.
- 81-3306. Repealed. Laws 2007, LB 296, § 815.
- 81-3307. Repealed. Laws 2007, LB 296, § 815.
- 81-3308. Repealed. Laws 2007, LB 296, § 815.
- 81-3309. Repealed. Laws 2007, LB 296, § 815.
- 81-3310. Repealed. Laws 2007, LB 296, § 815.
- 81-3311. Repealed. Laws 2007, LB 296, § 815.

**81-3301 Repealed. Laws 2007, LB 296, § 815.**

**81-3302 Repealed. Laws 2007, LB 296, § 815.**

**81-3303 Repealed. Laws 2007, LB 296, § 815.**

**81-3304 Repealed. Laws 2003, LB 467, § 22.**

**81-3305 Repealed. Laws 2003, LB 467, § 22.**

**81-3306 Repealed. Laws 2007, LB 296, § 815.**

**81-3307 Repealed. Laws 2007, LB 296, § 815.**

**81-3308 Repealed. Laws 2007, LB 296, § 815.**

**81-3309 Repealed. Laws 2007, LB 296, § 815.**

**81-3310 Repealed. Laws 2007, LB 296, § 815.**

**81-3311 Repealed. Laws 2007, LB 296, § 815.**

**ARTICLE 34**

**ENGINEERS AND ARCHITECTS REGULATION ACT**

Cross References

- License Suspension Act, see section 43-3301.
- Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

Section

- 81-3401. Act, how cited.
- 81-3402. Architecture and engineering; regulation; prohibited acts.
- 81-3403. Definitions, where found.

- Section
- 81-3404. Architect, defined.
  - 81-3405. Board, defined.
  - 81-3406. Consulting engineer, defined.
  - 81-3407. Continuing education, defined.
  - 81-3408. Coordinating professional, defined.
  - 81-3409. Design, defined.
  - 81-3410. Design profession, design professionals, or licensed professional, defined.
  - 81-3411. Direct supervision, defined.
  - 81-3412. Emeritus, defined.
  - 81-3413. Engineer, defined.
  - 81-3414. Engineer-intern, defined.
  - 81-3415. Estimator, technician, or other similar titles, defined.
  - 81-3416. Good moral character, defined.
  - 81-3417. Occasional, part-time, or consulting services, defined.
  - 81-3418. Organization, defined.
  - 81-3419. Planning, defined.
  - 81-3420. Practice of architecture, defined.
  - 81-3421. Practice of engineering, defined.
  - 81-3422. Professional engineer, defined.
  - 81-3423. Public service provider, defined.
  - 81-3424. Registration or licensure, defined.
  - 81-3425. Responsible charge, defined.
  - 81-3426. Rules and regulations, defined.
  - 81-3427. Technical submissions, defined.
  - 81-3428. Board of Engineers and Architects; created; members; terms.
  - 81-3429. Board; members; requirements; per diem; expenses.
  - 81-3430. Certificate of appointment; oath; Attorney General; legal advisor; seal; rules and regulations under prior law.
  - 81-3431. Board; meetings; officers; quorum.
  - 81-3432. Engineers and Architects Regulation Fund; created; use; investment.
  - 81-3433. Roster.
  - 81-3434. Code of practice; contents.
  - 81-3435. Application for licensure or enrollment; form; fees.
  - 81-3436. Organizational practice; certificate; authorization; immunity; Secretary of State; registration of trade name or service mark; limitation.
  - 81-3437. Certificate of licensure; issuance; seal; use; enrollment card; issuance.
  - 81-3438. Certificates; expiration; renewal; fees; continuing education.
  - 81-3439. Replacement certificates; fee.
  - 81-3440. Enforcement.
  - 81-3441. Use of title; unlawful practice.
  - 81-3442. Prohibited acts; penalties.
  - 81-3443. Enforcement procedures.
  - 81-3444. Disciplinary actions authorized; civil penalties.
  - 81-3445. State and political subdivisions; construction projects.
  - 81-3446. Construction projects on private lands; owner; duties.
  - 81-3447. Repealed. Laws 2004, LB 599, § 7.
  - 81-3448. Architect; license; application; fee; requirements; examination; issuance.
  - 81-3449. Practice of architecture; exempted activities.
  - 81-3450. Signing and sealing of technical submissions by architect.
  - 81-3451. Professional engineer or engineer-intern; license; application; examination; requirements.
  - 81-3452. Engineering examinations; board; procedure.
  - 81-3453. Practice of engineering; exempted activities.
  - 81-3454. Sealing and signing of technical submissions by professional engineer.
  - 81-3455. Act, how construed.

**81-3401 Act, how cited.**

Sections 81-3401 to 81-3455 shall be known and may be cited as the Engineers and Architects Regulation Act.

**Source:** Laws 1997, LB 622, § 1.

**81-3402 Architecture and engineering; regulation; prohibited acts.**

In order to safeguard life, health, and property and to promote the public welfare, the professions of architecture and engineering are declared to be subject to regulation in the public interest. It is unlawful for any person to (1) practice or offer to practice architecture or engineering in this state, (2) use in connection with his or her name, except as provided in sections 81-3413 to 81-3415, or otherwise assume the title architect or professional engineer, or (3) advertise any title or description tending to convey the impression that he or she is a licensed architect or engineer unless the person is duly licensed or exempt from licensure under the Engineers and Architects Regulation Act. The practice of architecture and engineering and use of the titles architect or professional engineer is a privilege granted by the state through the board based on the qualifications of the individual as evidenced by a certificate of licensure which is not transferable.

**Source:** Laws 1997, LB 622, § 2.

**81-3403 Definitions, where found.**

For purposes of the Engineers and Architects Regulation Act, the definitions found in sections 81-3404 to 81-3427 shall be used.

**Source:** Laws 1997, LB 622, § 3.

**81-3404 Architect, defined.**

Architect means a person who engages in the practice of architecture and who has a current certificate of licensure issued by the board.

**Source:** Laws 1997, LB 622, § 4.

**81-3405 Board, defined.**

Board means the Board of Engineers and Architects.

**Source:** Laws 1997, LB 622, § 5.

**81-3406 Consulting engineer, defined.**

Consulting engineer means a professional engineer whose principal occupation is the independent practice of engineering, whose livelihood is obtained by offering engineering services to the public, who serves clients as an independent fiduciary, who is devoid of public, commercial, and product affiliation that might tend to imply a conflict of interest, and who is cognizant of his or her public and legal responsibilities and is capable of discharging them.

**Source:** Laws 1997, LB 622, § 6.

**81-3407 Continuing education, defined.**

Continuing education means the process of training and developing knowledge related to a profession after licensure is attained.

**Source:** Laws 1997, LB 622, § 7.

**81-3408 Coordinating professional, defined.**

Coordinating professional means an architect or professional engineer who coordinates, as qualified, the various professional disciplines involved in a project.

**Source:** Laws 1997, LB 622, § 8.

**81-3409 Design, defined.**

Design means the preparation of schematics, layouts, plans, drawings, specifications, calculations, and other diagnostic documents which show the features, scope, and detail of an architectural or engineering work to be executed.

**Source:** Laws 1997, LB 622, § 9.

**81-3410 Design profession, design professionals, or licensed professional, defined.**

Design profession, design professionals, or licensed professional means the professions of architecture and engineering.

**Source:** Laws 1997, LB 622, § 10.

**81-3411 Direct supervision, defined.**

Direct supervision means the degree of supervision by a person overseeing the work of other persons by which the supervisor has control over and professional knowledge of the work being done.

**Source:** Laws 1997, LB 622, § 11.

**81-3412 Emeritus, defined.**

Emeritus, referring to an architect or professional engineer, means a professional who relinquishes or does not renew his or her licensure and who is approved by the board to receive publications and use the honorary title emeritus.

**Source:** Laws 1997, LB 622, § 12.

**81-3413 Engineer, defined.**

Engineer means a person who is qualified to practice engineering by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, both of which are satisfactory to the board.

**Source:** Laws 1997, LB 622, § 13.

**81-3414 Engineer-intern, defined.**

Engineer-intern means a person who has passed an examination in the fundamental engineering subjects as provided in section 81-3451.

**Source:** Laws 1997, LB 622, § 14.

**81-3415 Estimator, technician, or other similar titles, defined.**

Estimator, technician, or other similar titles means a person who through training or experience is performing under the supervision of an architect or

professional engineer tasks associated with the practice of architecture or engineering.

**Source:** Laws 1997, LB 622, § 15.

**81-3416 Good moral character, defined.**

Good moral character means such character as will enable a person to discharge the fiduciary duties of an architect or professional engineer to his or her client and to the public for the protection of the public health, safety, and welfare. Evidence of inability to discharge such duties includes the commission of an offense justifying discipline.

**Source:** Laws 1997, LB 622, § 16.

**81-3417 Occasional, part-time, or consulting services, defined.**

Occasional, part-time, or consulting services means services not provided by a full-time member of an organization engaged in a design profession.

**Source:** Laws 1997, LB 622, § 17.

**81-3418 Organization, defined.**

Organization includes a partnership, limited liability company, corporation, or other form of business entity but not public service providers.

**Source:** Laws 1997, LB 622, § 18.

**81-3419 Planning, defined.**

Planning means the mental formulation and written or graphic representation of a program for the accomplishment or attainment of design.

**Source:** Laws 1997, LB 622, § 19.

**81-3420 Practice of architecture, defined.**

Practice of architecture means rendering or offering to render services in connection with the design and construction, enlargement, or alteration of a building or group of buildings and the space within and surrounding the buildings. The services include planning, providing preliminary studies, designs, drawings, specifications, and other technical submissions, administration of construction contracts, coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects, and acting as a coordinating professional. The practice of architecture does not include the practice of engineering.

**Source:** Laws 1997, LB 622, § 20.

**81-3421 Practice of engineering, defined.**

Practice of engineering means any service or creative work if the adequate performance of the service or work requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to include such services or creative work as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, the review of construction for the

purpose of monitoring compliance with drawings and specifications, administration of construction contracts, and acting as a coordinating professional, and any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The practice of engineering does not include the practice of architecture.

Design coordination includes the review and coordination of those technical submissions prepared by others, including, but not limited to, as appropriate and without limitation, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the professional engineer.

Engineering surveys includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineering projects but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of the Engineers and Architects Regulation Act, if he or she: (1) Practices any branch of the profession of engineering; (2) by verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be a professional engineer; (3) through the use of some other title, implies that he or she is a professional engineer or licensed under the Engineers and Architects Regulation Act; or (4) holds himself or herself out as able to perform or does perform any engineering service or work or any other service designated by the practitioner which is recognized by the board as engineering. The practice of engineering does not include the services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, and marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant.

**Source:** Laws 1997, LB 622, § 21.

#### **81-3422 Professional engineer, defined.**

Professional engineer means a person who is licensed as a professional engineer by the board. The board may designate a professional engineer, on the basis of education, experience, and examination, as being licensed in a specific discipline or branch of engineering signifying the area in which the professional engineer has demonstrated competence.

**Source:** Laws 1997, LB 622, § 22.

#### **81-3423 Public service provider, defined.**

Public service provider means any political subdivision which appoints a municipal engineer or which employs a full-time person licensed under the

Engineers and Architects Regulation Act who is in responsible charge of architectural or engineering work.

**Source:** Laws 1997, LB 622, § 23.

**81-3424 Registration or licensure, defined.**

Registration or licensure means a certificate of registration or licensure issued by the board. The definition of license and registration shall be synonymous.

**Source:** Laws 1997, LB 622, § 24.

**81-3425 Responsible charge, defined.**

Responsible charge means control and supervision for engineering or architectural work.

**Source:** Laws 1997, LB 622, § 25.

**81-3426 Rules and regulations, defined.**

Rules and regulations means rules and regulations adopted and promulgated under the Engineers and Architects Regulation Act by the board.

**Source:** Laws 1997, LB 622, § 26.

**81-3427 Technical submissions, defined.**

Technical submissions means designs, drawings, specifications, studies, and other technical reports.

**Source:** Laws 1997, LB 622, § 27.

**81-3428 Board of Engineers and Architects; created; members; terms.**

(1) The Board of Engineers and Architects is created to administer the Engineers and Architects Regulation Act. The board may use any funds available to obtain suitable office space within Lincoln, Nebraska. The board shall consist of six members appointed by the Governor, after consultation with the appropriate professional organizations, for terms of five years terminating on the last day of February, and two education members appointed as prescribed in subsection (2) of this section. The board shall consist of:

- (a) Three architect members, including one education member;
- (b) Four professional engineer members, including one education member; and
- (c) One public member.

Each member shall hold office after the expiration of his or her term until his or her successor is duly appointed and qualified. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board, however created, shall be filled for the unexpired term by appointment by the Governor. The Board of Examiners for Professional Engineers and Architects as it existed immediately prior to January 1, 1998, shall serve as the Board of Engineers and Architects until the additional public member is appointed. The Governor shall reappoint or replace existing members as their terms expire, and the public member shall be reappointed or replaced in the fifth year of his or her term.

(2) The board shall include two education members who are licensed in the relevant profession representing the professional faculty of the College of Engineering and Technology and the College of Architecture within the University of Nebraska, as recommended by the dean of the respective college and appointed by the Governor. The appointments are for five years.

(3) The board may designate a former member of the board as an emeritus member. Emeritus member status, when conferred, must be renewed annually.

**Source:** Laws 1997, LB 622, § 28.

**81-3429 Board; members; requirements; per diem; expenses.**

Each member of the board shall be a citizen of the United States and a resident of the State of Nebraska for at least one year immediately preceding appointment. Each professional member shall have been engaged in the active practice of the design profession for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be licensed in the appropriate profession. Each member of the board shall receive as compensation not more than sixty dollars per day for each day actually spent in traveling to and from and while attending sessions of the board and its committees or authorized meetings of the National Council of Architectural Registration Boards, the National Council of Examiners for Engineering and Surveying, or their subdivisions or committees, and all necessary expenses incident to the performance of his or her duties under the Engineers and Architects Regulation Act as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1997, LB 622, § 29.

**81-3430 Certificate of appointment; oath; Attorney General; legal advisor; seal; rules and regulations under prior law.**

Each member of the board shall receive a certificate of appointment from the Governor and, before beginning his or her term of office, shall file with the Secretary of State the constitutional oath of office. The board or any committee of the board is entitled to the services of the Attorney General in connection with the affairs of the board, and the board may compel the attendance of witnesses, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction. The Attorney General shall act as legal advisor to the board and render such legal assistance as may be necessary in carrying out the Engineers and Architects Regulation Act. The board shall adopt and have an official seal, which shall be affixed to all certificates of licensure granted, and shall adopt and promulgate rules and regulations to carry out the act. The rules and regulations of the Board of Examiners for Professional Engineers and Architects in effect immediately prior to January 1, 1998, shall continue in effect until changed by the Board of Engineers and Architects.

**Source:** Laws 1997, LB 622, § 30.

**81-3431 Board; meetings; officers; quorum.**

The board shall hold at least one regular meeting each year. Special meetings shall be held as the rules and regulations provide and at such places as the board elects. Notice of all meetings shall be given in such manner as the rules and regulations provide. The board shall elect from its members, annually at its

first meeting after March 1, a chairperson, vice-chairperson, and secretary. A quorum of the board shall consist of not less than five members.

**Source:** Laws 1997, LB 622, § 31.

**81-3432 Engineers and Architects Regulation Fund; created; use; investment.**

The Engineers and Architects Regulation Fund is created. The secretary of the board shall receive and account for all money derived from the operation of the Engineers and Architects Regulation Act and shall remit the money to the State Treasurer for credit to the Engineers and Architects Regulation Fund. All expenses certified by the board as properly and necessarily incurred in the discharge of duties, including compensation and administrative staff, and any expense incident to the administration of the act relating to other states shall be paid out of the fund. Warrants for the payment of expenses shall be issued by the Director of Administrative Services and paid by the State Treasurer upon presentation of vouchers regularly drawn by the chairperson and secretary of the board and approved by the board. At no time shall the total amount of warrants exceed the total amount of the fees collected under the act and to the credit of the fund. Any money in the 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. Any money in the Professional Engineering and Architectural Examiners' Fund on January 1, 1998, shall be transferred to the Engineers and Architects Regulation Fund.

**Source:** Laws 1997, LB 622, § 32.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-3433 Roster.**

The secretary of the board shall publish a complete roster showing the names and last-known addresses of all architects and professional engineers at intervals as established by the board. The secretary shall file the roster with the Secretary of State and may mail a copy to each licensed person as well as county and municipal officials. The secretary of the board may also sell or distribute copies of the roster to the public.

**Source:** Laws 1997, LB 622, § 33.

**81-3434 Code of practice; contents.**

(1) The Legislature hereby finds and declares that a code of practice established by the board by which architects and professional engineers could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property of the citizens of this state.

(2) The code of practice established by this section shall include provisions on:

- (a) Professional competence;
- (b) Conflict of interest;
- (c) Full disclosure of financial interest;
- (d) Full disclosure of matters affecting public safety, health, and welfare;

- (e) Compliance with laws;
  - (f) Professional conduct and good character standards; and
  - (g) Practice of architecture and engineering.
- (3) The board may establish a code of practice through rules and regulations.
- (4) The board may publish commentaries regarding the code of practice. The commentaries shall explain the meaning of interpretations given to the code by the board.

**Source:** Laws 1997, LB 622, § 34.

**81-3435 Application for licensure or enrollment; form; fees.**

(1) Application for licensure as an architect or professional engineer or enrollment as an engineer-intern shall be made on a form prescribed and furnished by the board. It shall contain statements made under oath showing the applicant's education and a detailed summary of technical experience and shall include the names and complete mailing addresses of the references, none of whom should be members of the board. The board may accept the verified information contained in a valid Council Record issued by the National Council of Architectural Registration Board or the National Council of Examiners for Engineering and Surveying in lieu of the same information that is required on the form prescribed and furnished by the board.

(2) Application and licensure fees shall be established by the board and shall accompany the application. Original and reciprocal fees shall not exceed three hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of examination and its administration.

(3) The fee for intern enrollment shall be established by the board and shall accompany the application. The fee shall not exceed one hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration.

(4) The certificate of authorization fee for organizations shall be established by the board and shall accompany the application. The fee shall not exceed three hundred dollars per year.

(5) The fee for emeritus status shall be established by the board and shall accompany the application. The fee shall not exceed one hundred dollars per year.

(6) If the board denies the issuance of a certificate or enrollment to any applicant, including the application of an organization for a certificate of authorization, the board shall retain the fee.

**Source:** Laws 1997, LB 622, § 35.

**81-3436 Organizational practice; certificate; authorization; immunity; Secretary of State; registration of trade name or service mark; limitation.**

(1) The practice or offer to practice for others the professions of architecture or engineering by individuals licensed under the Engineers and Architects Regulation Act through an organization is permitted if the criteria for organizational practice established by the board are met and the organization had been issued a certificate of authorization by the board. All technical submissions by an organization involving the practice of architecture and engineering, when issued or filed for public record, shall be dated and bear the signature and seal

of the licensee qualified in the profession who prepared the submission or under whose immediate direction they were prepared. Public service providers are not included in this section.

(2) An organization desiring a certificate of authorization shall file with the board an application, using the form provided by the board, listing the names and addresses of all officers of the organization, the members of the organization's governing body, and the individual or individuals duly licensed to practice their respective professions in this state who shall be in responsible charge of the practice of those professions in the state through the organization. Any change in status of any of these persons during the certificate period shall be designated on the same form and filed with the board within thirty days after the effective date of the change. If the requirements of this section are met, the board shall issue a certificate of authorization to the organization and the organization may contract for and collect fees for furnishing professional services.

(3) The act shall not prevent an organization from performing professional services for itself.

(4) An organization is not relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section. An individual practicing architecture or engineering is not relieved of responsibility for services performed by reason of employment or any other relationship with an organization holding a certificate of authorization.

(5) Commencing one year after January 1, 1998, the Secretary of State shall not issue a certificate of authority to do business in the state to an applicant or issue a registration of name to an organization which includes among the objectives for which it is established the practice of architecture or engineering, or any modification or derivation of those design professions, unless the board has issued the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive a certificate. The organization shall supply the certificate or letter with its application for incorporation or licensure.

(6) Commencing one year after January 1, 1998, the Secretary of State shall not register any trade name or service mark which includes the words architect or engineer, or any modification or derivative of such words, in its firm name or logotype except to those organizations holding authorization certificates issued by the board except as authorized in the act or in the Professional Landscape Architects Act.

(7) The certificate of authorization shall be renewed periodically as required by the board.

(8) A design professional who renders occasional, part-time, or consulting services to or for an organization may not for the purposes of this section be designated as being responsible for the professional activities of the organization.

**Source:** Laws 1997, LB 622, § 36.

**Cross References**

**Professional Landscape Architects Act**, see section 81-8,208.

**81-3437 Certificate of licensure; issuance; seal; use; enrollment card; issuance.**

(1) The board shall issue to any applicant who, on the basis of education, experience, and examination, has met the requirements of the Engineers and Architects Regulation Act a certificate of licensure giving the licensee proper authority to carry out the prerogatives of the act. The certificate of licensure shall carry the designation Licensed Architect or Licensed Professional (discipline) Engineer. The certificate shall give the full name of the licensee and license number and shall be signed by the chairperson of the board, the secretary of the board, and a board member representing the respective profession under the seal of the board.

(2) The certificate shall be prima facie evidence that the person is entitled to all rights, privileges, and responsibilities of an architect or a professional engineer while the certificate of licensure remains unrevoked and unexpired.

(3)(a) Each licensee authorized to practice architecture or engineering must obtain a seal. It shall be unlawful for a licensee to affix his or her seal and signature or to permit his or her seal and signature to be affixed to any document after the expiration of the certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade the act.

(b) The seal may be a rubber stamp or may be generated electronically. Whenever the seal is applied, the licensee's written signature and the date shall be across the seal. No further words or wording are required. Electronic signatures applied to electronic seals must be protected with an electronic revision approval system. Documents without electronic revision approval protection that are transmitted electronically to a client or a governmental agency shall have the seal removed from the file. The electronic media shall have the following inserted in lieu of the seal, signature, and date:

This document was originally issued and sealed by (name of sealer), (license number), on (date of sealing). This media should not be considered a certified document.

(c) The seal, signature, and date shall be placed on all technical submissions and calculations whenever presented to a client or any public or governmental agency.

(d) The seal, signature, and date shall be placed on all originals, copies, tracings, or other reproducible drawings and the first and last pages of specifications, reports, and studies in such a manner that the seal, signature, and date will be reproduced and be in compliance with rules and regulations of the board. The application of the licensee's seal and signature shall constitute certification that the work was done by the licensee or under the licensee's control. In the case of multiple sealings, the first or title page shall be sealed, signed, and dated by all involved. In addition, each sheet shall be sealed, signed, and dated by the licensee responsible for each sheet. In the case of an organization, each sheet shall be sealed, signed, and dated by the licensee involved. The architect or professional engineer in responsible charge shall sign, seal, and date the title or first sheet.

(e) In the case of a temporary permit issued to a licensee of another state, the licensee shall use his or her state of licensure seal and shall affix his or her signature and temporary permit to all his or her work.

(f) The design of the seal shall be determined by the board. The following information shall be on the seal: State of Nebraska; licensee's name; licensee's license number; and the words Architect or Professional (discipline) Engineer.

(g) Projects involving more than one licensed architect or professional engineer shall have one designated as the coordinating professional. The coordinating professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the coordinating professional.

(4) The board shall issue to any applicant who, in the opinion of the board, has met the requirements of the act an enrollment card as engineer-intern which indicates that his or her name has been recorded as such in the board office. The engineer-intern enrollment card does not authorize the holder to practice as a professional engineer.

**Source:** Laws 1997, LB 622, § 37.

**81-3438 Certificates; expiration; renewal; fees; continuing education.**

Certificates of licensure and certificates of authorization shall expire on a date established by the board and shall become invalid after that date unless renewed. The secretary of the board shall notify every person licensed under the Engineers and Architects Regulation Act and every organization holding a certificate of authorization under the act of the date of the expiration of the certificate of licensure or certificate of authorization and the amount of the fee required for renewal. The notice shall be mailed to the licensee or organization at the last-known address on file with the board at least one month in advance of the date of the expiration. Renewal may be effected at any time prior to or during the period established by the board upon application and payment of a renewal fee. The fee shall not exceed two hundred dollars per year. Renewal of an expired certificate may be effected under rules and regulations of the board regarding requirements for reexamination and for penalty fees. The board may adopt a program of continuing education for individual licensees.

**Source:** Laws 1997, LB 622, § 38.

**81-3439 Replacement certificates; fee.**

The board may issue a new certificate of licensure or certificate of authorization to replace any lost, destroyed, or mutilated certificate. A fee not to exceed one hundred dollars shall be charged for each such issuance.

**Source:** Laws 1997, LB 622, § 39.

**81-3440 Enforcement.**

The board shall enforce the Engineers and Architects Regulation Act and the rules and regulations, including enforcement against any unlicensed person. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the Attorney General or the appropriate county attorney shall file an action for the enforcement of the decision or order, including injunctive relief, in the district court. After a hearing, the court shall order enforcement of the decision or order, or any part thereof, if legally and properly made by the board and, if appropriate, injunctive relief.

**Source:** Laws 1997, LB 622, § 40.

**81-3441 Use of title; unlawful practice.**

Except as provided in sections 81-3413 to 81-3415 and 81-3448 to 81-3453, an individual shall not directly or indirectly engage in the practice of architec-

ture or engineering in the state or use the title architect or professional engineer or display or use any words, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that he or she is an architect or professional engineer or is practicing architecture or engineering unless he or she is licensed under the Engineers and Architects Regulation Act. A licensee shall not aid or abet any person not licensed under the act in the practice of architecture or engineering.

**Source:** Laws 1997, LB 622, § 41.

**81-3442 Prohibited acts; penalties.**

Any person who performs any of the following actions is guilty of a Class I misdemeanor for the first offense and a Class IV felony for the second or any subsequent offense:

- (1) Practices or offers to practice architecture or engineering in this state without being licensed in accordance with the Engineers and Architects Regulation Act;
- (2) Knowingly and intentionally employs or retains a person to practice architecture or engineering in this state who is not licensed in accordance with the act except as provided in sections 81-3413 to 81-3415 and who is not exempted by sections 81-3448 to 81-3453;
- (3) Uses the words architect, engineer, or any modification or derivative of such words in its name or form of business activity except as authorized in the act or in the Professional Landscape Architects Act;
- (4) Presents or attempts to use the certificate of licensure or the seal of another person;
- (5) Gives any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate;
- (6) Falsely impersonates any other licensee of like or different name;
- (7) Attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure or who practices or offers to practice when not qualified;
- (8) Falsely claims that he or she is licensed or authorized under the act; or
- (9) Violates the act.

**Source:** Laws 1997, LB 622, § 42.

**Cross References**

**Professional Landscape Architects Act**, see section 81-8,208.

**81-3443 Enforcement procedures.**

Charges against any person involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board. The charges, at the discretion of the board, shall be heard within a reasonable time in accordance with the rules and regulations and may be heard through the use of a hearing officer. The accused shall have the right to appear personally with or without counsel, to cross-examine adverse witnesses, and to produce evidence and witnesses in his or her defense. The board shall set the time and place for the hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused, at his or her last-known business or residence address known to the board, at least thirty days before the hearing. If after the hearing the board

finds the accused has violated the Engineers and Architects Regulation Act or any rules or regulations, it may issue any order or take any action described in section 81-3444. If the board finds no violation, it shall enter an order dismissing the charges. If the order revokes, suspends, or cancels a license, the board shall notify, in writing, the Secretary of State and the clerk of the city or village in the state where the person has a place of business, if any. The board may reissue a license to any person whose license has been revoked. Application for the reissuance of a license shall be made in such a manner as the board directs and shall be accompanied by a fee established by the board.

**Source:** Laws 1997, LB 622, § 43.

**81-3444 Disciplinary actions authorized; civil penalties.**

(1) The board may after hearing, by majority vote, take any or all of the following actions, upon proof satisfactory to the board that any person or organization has violated the Engineers and Architects Regulation Act or any rules or regulations. The following actions may be taken against a holder of a license upon a two-thirds majority vote of the board:

- (a) Issuance of censure or reprimand;
- (b) Suspension of judgment;
- (c) Placement of the offender on probation;
- (d) Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;
- (e) Imposition of a civil penalty not to exceed ten thousand dollars for each offense. The amount of the penalty shall be based on the severity of the violation;
- (f) Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;
- (g) Issuance of a cease and desist order;
- (h) Imposition of costs as in an ordinary civil action in the district court, which may include reasonable attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or
- (i) Dismissal of the action.

(2) In hearings under this section, the board may take into account suitable evidence of reform.

(3) Civil penalties collected under subdivision (1)(e) of this section shall be remitted to the State Treasurer for credit to the permanent school fund. All costs collected under subdivision (1)(h) of this section shall be remitted to the State Treasurer for credit to the Engineers and Architects Regulation Fund.

**Source:** Laws 1997, LB 622, § 44.

**81-3445 State and political subdivisions; construction projects.**

Except as otherwise provided in this section and sections 81-3449 to 81-3453, the state and its political subdivisions shall not engage in the construction of any public works involving architecture or engineering unless the plans, specifications, and estimates have been prepared and the construction has been observed by an architect, a professional engineer, or a person under the direct

supervision of an architect, professional engineer, or those under the direct supervision of an architect or professional engineer. This section shall not apply to any public work in which the contemplated expenditure for the complete project does not exceed eighty-six thousand dollars. The board shall adjust the dollar amount in this section every fifth year commencing July 1, 2009. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount.

**Source:** Laws 1997, LB 622, § 45; Laws 1999, LB 253, § 2; Laws 2004, LB 599, § 2.

**81-3446 Construction projects on private lands; owner; duties.**

(1) The owner of any real property who allows a project to be constructed on his or her real property is engaged in the practice of architecture or engineering unless he or she employs or causes others to employ licensed professionals or persons under the direct supervision of licensed professionals to furnish at least minimum construction phase services with respect to the project or is exempt from the Engineers and Architects Regulation Act under sections 81-3449 and 81-3453.

(2) For purposes of this section:

(a) Building official means the person appointed by the state or political subdivision having jurisdiction over the project to have principal responsibility for the safety of the project as completed;

(b) Construction phase service includes at least the following services: (i) Visiting the project site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the project permit was issued; and (ii) processing technical submissions required of the contractor by the terms of contract documents. The term does not include supervision of construction, review of payment applications, resolution of disputes between the owner and contractor, and other such items which are considered additional construction administration services which the owner may or may not elect to include in the architect's or engineer's scope of work;

(c) Owner means with respect to any real property the following persons: (i) The record owner of such real property; (ii) the lessee of all or any portion of the real property when the lease covers all of that portion of the real property upon which the project is being constructed, the lessee has significant approval rights with respect to the project, and the lease, at the time the project begins, has a remaining term of not less than ten years; or (iii) the grantee of an easement granting right-of-way to construct the project; and

(d) Project means the construction, enlargement, or alteration of works involving the practice of architecture or engineering other than those exempted by sections 81-3449 to 81-3453.

**Source:** Laws 1997, LB 622, § 46.

**81-3447 Repealed. Laws 2004, LB 599, § 7.****81-3448 Architect; license; application; fee; requirements; examination; issuance.**

(1) A person applying to the Board of Engineers and Architects for initial licensure as an architect shall submit an application accompanied by the fee established by the board and satisfactory evidence that he or she holds a degree in architecture accredited by the National Architectural Accreditation Board and that he or she has completed practical training in architectural work as required by the Board of Engineers and Architects. If an applicant is qualified, the Board of Engineers and Architects shall, by means of a written or electronic examination, examine the applicant on technical and professional subjects as prescribed by the board. None of the examination materials shall be considered public records. The board may exempt from the written examination an applicant who holds a certification issued by the National Council of Architectural Registration Boards. The Board of Engineers and Architects may adopt guidelines published from time to time by the National Council of Architectural Registration Boards. The Board of Engineers and Architects may also adopt the examinations and grading procedures of the National Council of Architectural Registration Boards and the accreditation decisions of the National Architectural Accreditation Board. The Board of Engineers and Architects shall issue a certificate of licensure to each applicant who is found to be of good moral character and who satisfies the requirements set forth in this section. Licensure shall be effective upon issuance.

(2) Persons applying for initial licensure who do not hold a degree in architecture accredited by the National Architectural Accreditation Board shall submit an application accompanied by the fee established by the Board of Engineers and Architects. The application shall demonstrate satisfactory evidence of twelve years' combined architectural education and architectural work experience, including the equivalent of the Intern Development Program promulgated by the National Council of Architectural Registration Boards. If an applicant is determined by the Board of Engineers and Architects to meet this requirement, the board shall, by means of a written or electronic examination, examine the applicant on technical and professional subjects as prescribed by the board. Starting January 1, 2000, only individuals who have earned a bachelor of science in architectural studies degree with an architecture emphasis prior to December 31, 1999, can be considered under this subsection.

**Source:** Laws 1997, LB 622, § 48.

**81-3449 Practice of architecture; exempted activities.**

The provisions of the Engineers and Architects Regulation Act regulating the practice of architecture do not apply to the following activities:

(1) The construction, remodeling, alteration, or renovation of a detached single-family through four-family dwelling of less than five thousand square feet of above grade finished space. Any detached or attached sheds, storage buildings, and garages incidental to the dwelling are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(2) The construction, remodeling, alteration, or renovation of a one-story commercial or industrial building or structure of less than five thousand square feet of above grade finished space which does not exceed thirty feet in height unless such building or structure, or the remodeling or repairing thereof, provides for the employment, housing, or assembly of twenty or more persons. Any detached or attached sheds, storage buildings, and garages incidental to the building or structure are not included in the tabulation of finished space. Such exemptions may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(3) The construction, remodeling, alteration, or renovation of farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage, if the structures are designed to be occupied by no more than twenty persons. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(4) Any public works project with contemplated expenditures for a completed project that do not exceed eighty-six thousand dollars. The board shall adjust the dollar amount in this subdivision every fifth year commencing July 1, 2009. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount;

(5) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(6) The teaching, including research and service, of architectural subjects in a college or university offering a degree in architecture accredited by the National Architectural Accreditation Board;

(7) The preparation of submissions to architects, building officials, or other regulating authorities by the manufacturer, supplier, or installer of any materials, assemblies, components, or equipment that describe or illustrate the use of such items, the preparation of any details or shop drawings required of the contractor by the terms of the construction documents, or the management of construction contracts by persons customarily engaged in contracting work;

(8) The preparation of technical submissions or the administration of construction contracts by employees of a person or organization lawfully engaged in the practice of architecture if such employees are acting under the direct supervision of an architect;

(9) The offering by an organization of a combination of services involved in the practice of architecture and construction services if:

(a) An architect or person otherwise permitted under subdivision (11) of this section to offer architectural services participates substantially in all material aspects of the offering;

(b) There is written disclosure at the time of the offering that an architect is engaged by and contractually responsible to such organization;

(c) Such organization agrees that the architect will have direct supervision of the work and that such architect's services will not be terminated without the consent of the person engaging the organization; and

(d) The rendering of architectural services by such architect will conform to the Engineers and Architects Regulation Act and the rules and regulations;

(10) A public service provider or an organization who employs a design professional from performing professional services for itself;

(11) A nonresident who holds the certification issued by the National Council of Architectural Registration Boards from offering to render the professional services involved in the practice of architecture. The nonresident shall not perform any of the professional services involved in the practice of architecture until licensed as provided in the act. The nonresident shall notify the board in writing that (a) he or she holds a National Council of Architectural Registration Boards certificate and is not currently licensed in Nebraska but will be present in Nebraska for the purpose of offering to render architectural services, (b) he or she will deliver a copy of the notice to every potential client to whom the applicant offers to render architectural services, and (c) he or she promises to apply immediately to the board for licensure if selected as the architect for the project;

(12) The practice of any other certified trade or legally recognized profession;

(13) Financial institutions making disbursements of funds in connection with construction projects;

(14) Earthmoving and related work associated with soil and water conservation practices performed on farmland or any land owned by a political subdivision that is not subject to a permit from the Department of Natural Resources or for work related to livestock waste facilities that are not subject to a permit by the Department of Environmental Quality; and

(15) The work of employees and agents of a political subdivision or a nonprofit entity organized for the purpose of furnishing electrical service performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance.

**Source:** Laws 1997, LB 622, § 49; Laws 1999, LB 253, § 3; Laws 1999, LB 440, § 1; Laws 2000, LB 900, § 251; Laws 2004, LB 599, § 3.

#### Cross References

Negotiated Rulemaking Act, see section 84-921.

### **81-3450 Signing and sealing of technical submissions by architect.**

An architect shall not sign or seal technical submissions unless they were prepared by the architect or under his or her direct supervision, except that in the case of the portions of such technical submissions prepared under the direct supervision of another architect employed by the first architect or by his or her firm, he or she may sign and seal those portions of the technical submissions if the architect has reviewed such portions and has coordinated their preparation or integrated them into his or her work. He or she may sign or seal those

portions of the technical submissions that are not required by the Engineers and Architects Regulation Act to be prepared by or under the direct supervision of an architect if the architect has reviewed or adapted in whole or in part such submissions and integrated them into his or her work.

**Source:** Laws 1997, LB 622, § 50.

**81-3451 Professional engineer or engineer-intern; license; application; examination; requirements.**

(1) To be eligible for admission to examination to be a professional engineer or engineer-intern, an applicant must be of good moral character and reputation and shall submit five references with his or her application for licensure as a professional engineer or enrollment as an engineer-intern. Three of the references shall be professional engineers having personal knowledge of the applicant's engineering experience or, in the case of an application for enrollment as an engineer-intern, character references.

(2)(a) A person holding a certificate of licensure to engage in the practice of engineering, issued by the proper authority of a state or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the Engineers and Architects Regulation Act and were of a standard not lower than that specified in the applicable licensure law in effect in this state at the time such certificate was issued may, upon application, be licensed as a professional engineer without further examination.

(b) A person holding an active Council Record with the National Council of Examiners for Engineering and Surveying whose qualifications as evidenced by the Council Record meet the requirements of the act may, upon application, be licensed as a professional engineer without further examination.

(c) A graduate of an Accrediting Board for Engineering and Technology accredited engineering curriculum, enrolled as an engineer-intern, and having a specific record of an additional four years or more of progressive post-baccalaureate-degree experience on engineering projects of a grade and a character which indicates to the Board of Engineers and Architects that the applicant may be competent to practice engineering shall be admitted to an eight-hour examination, administered by the board, on the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice engineering in this state if the applicant is otherwise qualified. Engineering teaching of advanced subjects and the design of engineering research and projects in a college or university offering an Accrediting Board for Engineering and Technology accredited engineering curriculum of four years or more may be considered as engineering experience. An applicant who does not hold an Accrediting Board for Engineering and Technology accredited engineering degree but who is enrolled as an engineer-intern in this state and has a specific record of an additional six years or more of progressive experience on engineering projects of a grade and a character which indicates to the Board of Engineers and Architects that the applicant may be competent to practice engineering shall be admitted to an eight-hour examination, administered by the board, in the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice engineering in this state if otherwise qualified.

(3)(a) A graduate of or senior in an Accrediting Board for Engineering and Technology accredited engineering curriculum, or the substantial equivalent as determined by the board, shall be admitted to an eight-hour examination on the fundamentals of engineering. Upon passing the examination and verification of graduation, the applicant shall be enrolled as an engineer-intern.

(b) An applicant who does not hold an Accrediting Board for Engineering and Technology accredited engineering degree may be admitted to the fundamentals of engineering examination if he or she has six years of engineering work experience or engineering-related education. Upon passing the examination, the applicant shall be enrolled as an engineer-intern. This subdivision terminates on January 1, 2005.

**Source:** Laws 1997, LB 622, § 51; Laws 2004, LB 599, § 4; Laws 2004, LB 1069, § 1.

#### **81-3452 Engineering examinations; board; procedure.**

(1) The board or its agent shall direct the time and place of engineering examinations. The board shall determine the acceptable grade on examinations.

(2) The examination will be given in two sections and may be taken only after the applicant has met the other minimum requirements as described in section 81-3451 and has been approved by the board for admission to the examination as follows:

(a) The fundamentals of engineering examination consists of an eight-hour test period on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer-intern enrollment card if all other requirements for certification are met; and

(b) The principles and practice of engineering examination consists of an eight-hour test period on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if all other requirements for certification are met.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. In the event of a second failure, the examinee may, at the discretion of the board, be required to appear before the board with evidence of having acquired the necessary additional knowledge to qualify before admission to the examination.

(4) The board may prepare and adopt specifications for the examinations. They shall be published in brochure form and be available to any person interested in being licensed or certified.

**Source:** Laws 1997, LB 622, § 52.

#### **81-3453 Practice of engineering; exempted activities.**

The provisions of the Engineers and Architects Regulation Act regulating the practice of engineering do not apply to the following activities:

(1) The construction, remodeling, alteration, or renovation of a detached single-family through four-family dwelling of less than five thousand square feet above grade finished space. Any detached or attached sheds, storage buildings, and garages incidental to the dwelling are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed

the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(2) The construction, remodeling, alteration, or renovation of a one-story commercial or industrial building or structure of less than five thousand square feet above grade finished space which does not exceed thirty feet in height unless such building or structure, or the remodeling or repairing thereof, provides for the employment, housing, or assembly of twenty or more persons. Any detached or attached sheds, storage buildings, and garages incidental to the building or structure are not included in the tabulation of finished space. Such exemptions may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(3) The construction, remodeling, alteration, or renovation of farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage and if the structures are designed to be occupied by no more than twenty persons. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(4) Any public works project with contemplated expenditures for the completed project that do not exceed eighty-six thousand dollars. The board shall adjust the dollar amount in this subdivision every fifth year commencing July 1, 2009. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount;

(5) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(6) The teaching, including research and service, of engineering subjects in a college or university offering an Accrediting Board for Engineering and Technology accredited engineering curriculum of four years or more;

(7) The Engineers and Architects Regulation Act does not prevent a public service provider or an organization who employs a design professional from performing professional services for itself;

(8) The practice of any other certified trade or legally recognized profession;

(9) The offer to practice engineering by a person not a resident of and having no established place of business in this state if the person is legally qualified by licensure to practice engineering in his or her own state or country. The person shall make application to the board in writing and after payment of a fee established by the board may be granted a temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to such applicant with respect to any other work not set forth in the permit;

(10) The work of an employee or a subordinate of a person holding a certificate of licensure under the act or an employee of a person practicing

lawfully under subdivision (9) of this section if the work is done under the direct supervision of a person holding a certificate of licensure or a person practicing lawfully under such subdivision;

(11) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;

(12) Financial institutions making disbursements of funds in connection with construction projects;

(13) Earthmoving and related work associated with soil and water conservation practices performed on farmland or any land owned by a political subdivision that is not subject to a permit from the Department of Natural Resources or for work related to livestock waste facilities that are not subject to a permit by the Department of Environmental Quality;

(14) The work of employees and agents of a political subdivision or a nonprofit entity organized for the purpose of furnishing electrical service performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance;

(15) Work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, which does not have a substantial impact upon public health, safety, and welfare, as determined by the board, or require the submission of reports or documents to public agencies;

(16) The construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the owner thereof to be designed or supervised by an engineer or unless legal requirements are imposed upon the owner of a water well as a part of a public water supply;

(17) Work performed in the exploration, development, and production of oil and gas or before the Nebraska Oil and Gas Conservation Commission; and

(18) Siting, layout, construction, and reconstruction of a private onsite wastewater treatment system with a maximum flow from the facility of one thousand gallons of domestic wastewater per day if such system meets all of the conditions required pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act unless the siting, layout, construction, or reconstruction by an engineer is required by the Department of Environmental Quality, mandated by law or rules and regulations imposed upon the owner of the system, or required by the owner.

**Source:** Laws 1997, LB 622, § 53; Laws 1999, LB 253, § 4; Laws 1999, LB 440, § 2; Laws 2000, LB 900, § 252; Laws 2003, LB 94, § 19; Laws 2004, LB 599, § 5.

#### Cross References

Negotiated Rulemaking Act, see section 84-921.

Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, see section 81-15,236.

**81-3454 Sealing and signing of technical submissions by professional engineer.**

(1) A professional engineer shall not affix his or her seal or signature to sketches, working drawings, specifications, or other documents developed by others not under his or her direct supervision, except that in the case of the portions of such technical submissions prepared under the direct supervision of another professional engineer employed by the first professional engineer or by his or her firm, he or she may sign and seal those portions of the technical submissions if the professional engineer has reviewed such portions and has coordinated their preparation or integrated them into his or her work. He or she may sign or seal those portions of the technical submissions that are not required by the Engineers and Architects Regulation Act to be prepared by or under the direct supervision of a professional engineer if the professional engineer has reviewed or adapted in whole or in part such submission and integrated them into his or her work.

(2) In the case of a temporary permit issued to a professional engineer of another state, the licensee shall use his or her state of licensure seal and shall affix his or her signature and a copy of the temporary permit to all his or her work.

**Source:** Laws 1997, LB 622, § 54.

**81-3455 Act, how construed.**

The Legislature declares that the Engineers and Architects Regulation Act is necessary for the public convenience and welfare, is remedial in nature, and shall be construed liberally. Nothing in the act shall be construed to establish a statewide building code.

**Source:** Laws 1997, LB 622, § 55.

**ARTICLE 35****GEOLOGISTS REGULATION ACT****Cross References**

**License Suspension Act**, see section 43-3301.

**Nebraska Consultants' Competitive Negotiation Act**, see section 81-1702.

Section	
81-3501.	Act, how cited.
81-3502.	Geology; regulation; prohibited acts.
81-3503.	Definitions, where found.
81-3504.	Board, defined.
81-3505.	Consulting geologist, defined.
81-3506.	Continuing education, defined.
81-3507.	Direct supervision, defined.
81-3508.	Emeritus, referring to a geologist, defined.
81-3509.	Geologist, defined.
81-3509.01.	Geologist-intern, defined.
81-3510.	Geology, defined.
81-3511.	Geology specialty, defined.
81-3512.	Good character, defined.
81-3513.	Occasional, part-time, or consulting services, defined.
81-3514.	Organization, defined.
81-3515.	Practice of geology, defined.
81-3516.	Professional geologist, defined.
81-3517.	Registration (or licensure), defined.
81-3518.	Responsible charge, defined.

**§ 81-3501**

**STATE ADMINISTRATIVE DEPARTMENTS**

Section

- 81-3519. Technical submissions, defined.
- 81-3520. Board of Geologists; created; membership; terms.
- 81-3521. Board; membership requirements; expenses.
- 81-3522. Board; certificate of appointment; Attorney General; duties; official seal; rules and regulations.
- 81-3523. Board; meetings; quorum.
- 81-3524. Geologists Regulation Fund; created; use; investment.
- 81-3525. Roster.
- 81-3526. Code of practice; board; powers and duties.
- 81-3527. Licensure; enrollment; application; fees.
- 81-3528. Practice through organization; certificate of authorization; requirements.
- 81-3529. Certificate of licensure; seal; use; restrictions; enrollment card.
- 81-3530. Seal and signature; use; restrictions.
- 81-3531. Certificate of licensure; certificate of authorization; renewal; notice; fee; continuing education; authorized.
- 81-3532. Certificates; replacement; fee.
- 81-3533. Enforcement of act.
- 81-3534. Practice of geology; restrictions.
- 81-3535. Prohibited acts; penalties.
- 81-3536. Violation of act; charges; board; duties; hearing.
- 81-3537. Violation of act; disciplinary action; penalties.
- 81-3538. Repealed. Laws 2005, LB 544, § 1.
- 81-3539. Licensure; enrollment; applicant; qualifications.
- 81-3540. Geology examinations.
- 81-3541. Licensure; activities exempt.

**81-3501 Act, how cited.**

Sections 81-3501 to 81-3541 shall be known and may be cited as the Geologists Regulation Act.

**Source:** Laws 1998, LB 1161, § 49; Laws 2004, LB 890, § 1.

**81-3502 Geology; regulation; prohibited acts.**

In order to safeguard life, health, and property and to promote the public welfare, the profession of geology is declared to be subject to regulation in the public interest. It is unlawful for any person to (1) practice or offer to practice geology in this state, (2) use in connection with his or her name or otherwise assume the title professional geologist, or (3) advertise any title or description tending to convey the impression that he or she is a licensed geologist, unless the person is duly licensed or exempt from licensure under the Geologists Regulation Act. The practice of geology and use of the title geologist is a privilege granted by the state.

**Source:** Laws 1998, LB 1161, § 50.

**81-3503 Definitions, where found.**

For purposes of the Geologists Regulation Act, the definitions found in sections 81-3504 to 81-3519 shall be used.

**Source:** Laws 1998, LB 1161, § 51; Laws 2004, LB 890, § 2.

**81-3504 Board, defined.**

Board means the Board of Geologists.

**Source:** Laws 1998, LB 1161, § 52.

**81-3505 Consulting geologist, defined.**

Consulting geologist means a professional geologist whose principal occupation is the independent practice of geology; whose livelihood is obtained by offering geologic services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial, and product affiliation that might tend to imply a conflict of interest; and who is cognizant of his or her public and legal responsibilities and is capable of discharging them.

**Source:** Laws 1998, LB 1161, § 53.

**81-3506 Continuing education, defined.**

Continuing education means the process of training and developing knowledge related to a profession after licensure is attained.

**Source:** Laws 1998, LB 1161, § 54.

**81-3507 Direct supervision, defined.**

Direct supervision means the degree of supervision by a person overseeing the work of another person by which the supervisor has control over and detailed professional knowledge of the work being done.

**Source:** Laws 1998, LB 1161, § 55.

**81-3508 Emeritus, referring to a geologist, defined.**

Emeritus, referring to a geologist, means a professional who relinquishes or does not renew his or her licensure and who is approved by the board to receive publications and use the honorary title emeritus.

**Source:** Laws 1998, LB 1161, § 56.

**81-3509 Geologist, defined.**

Geologist means a person who is qualified to practice geology by reason of special knowledge and use of the earth sciences and the principles of geology and geologic data collection and analysis acquired by geologic education and geologic experience as provided in section 81-3539.

**Source:** Laws 1998, LB 1161, § 57.

**81-3509.01 Geologist-intern, defined.**

Geologist-intern means a person who has passed an examination in the fundamentals of geology as provided in section 81-3540.

**Source:** Laws 2004, LB 890, § 3.

**81-3510 Geology, defined.**

Geology means the science which includes treatment of the earth and its origin and history, in general; investigation of the earth's constituent rocks, soils, minerals, solids, fluids including underground waters, gases, and other materials; the study of the natural agents, forces, and processes which cause changes in the earth or on its surface; and the application of this knowledge of the earth.

**Source:** Laws 1998, LB 1161, § 58.

**81-3511 Geology specialty, defined.**

Geology specialty means a branch of geology which has been recognized for the purposes of licensure, including, but not limited to, environmental geology, engineering geology, geophysics, hydrogeology, petroleum geology, mining geology, and structural geology.

**Source:** Laws 1998, LB 1161, § 59.

**81-3512 Good character, defined.**

Good character means such character as will enable a person to discharge the fiduciary duties of a geologist to his or her client and to the public for the protection of the public health, safety, and welfare. Evidence of inability to discharge such duties includes the commission of an offense justifying discipline.

**Source:** Laws 1998, LB 1161, § 60.

**81-3513 Occasional, part-time, or consulting services, defined.**

Occasional, part-time, or consulting services means services not provided by a full-time member of an organization engaged in geology.

**Source:** Laws 1998, LB 1161, § 61.

**81-3514 Organization, defined.**

Organization includes a partnership, limited liability company, corporation, or other form of business entity.

**Source:** Laws 1998, LB 1161, § 62.

**81-3515 Practice of geology, defined.**

Practice of geology means any service or creative work if the adequate performance of the service or work requires geologic education, training, and experience to include such services or creative work as geological consultation, investigation, planning, surveying, mapping, and inspection of geological work, and the responsible supervision thereof, the performance of which is related to public welfare or the safeguarding of life, health, property, and the environment, and teaching, including research and service, of advanced geological subjects. A person shall be construed to practice or offer to practice geology if he or she: (1) Practices any branch of the profession of geology; (2) by verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be a professional geologist; (3) through the use of some other title, implies that he or she is licensed under the Geologists Regulation Act; or (4) holds himself or herself out as able to perform or does perform any geologic service or work recognized by the board as the practice of geology.

**Source:** Laws 1998, LB 1161, § 63.

**81-3516 Professional geologist, defined.**

Professional geologist means a geologist who has a current certificate of licensure issued by the board.

**Source:** Laws 1998, LB 1161, § 64.

**81-3517 Registration (or licensure), defined.**

Registration (or licensure) means a certificate of registration (or licensure) issued by the board. For the purposes of the Geologists Regulation Act, license and registration have the same meaning.

**Source:** Laws 1998, LB 1161, § 65.

**81-3518 Responsible charge, defined.**

Responsible charge means direct control, direction, and personal supervision by use of initiative and independent judgment for geological work.

**Source:** Laws 1998, LB 1161, § 66.

**81-3519 Technical submissions, defined.**

Technical submissions means designs, drawings, specifications, studies, and other technical reports.

**Source:** Laws 1998, LB 1161, § 67.

**81-3520 Board of Geologists; created; membership; terms.**

(1) The Board of Geologists is created to administer the Geologists Regulation Act. The board may use any funds available to obtain suitable office space within Lincoln, Nebraska, for the board. The board shall consist of seven members appointed by the Governor for terms of five years each, ending on the last day of February. The members shall include one education member appointed pursuant to subsection (2) of this section and one public member. All members of the board shall be professional geologists with the exception of the one public member. Each member shall hold office after the expiration of his or her term until his or her successor is duly appointed and qualified. The length of the initial terms shall be staggered, as determined by the board. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies on the board, however created, shall be filled for the unexpired term by appointment by the Governor.

(2) The membership of the board shall include one education member who is licensed in geology representing the professional faculty of the geology departments, including the Conservation and Survey Division, all within the University of Nebraska, as recommended by the president of the university, and appointed by the Governor.

(3) The membership of the board shall include one public member appointed by the Governor. The appointment is for five years.

(4) The board may designate a former member of the board as an emeritus member. Emeritus member status, when conferred, must be renewed annually. The emeritus member shall be a nonvoting member.

**Source:** Laws 1998, LB 1161, § 68.

**81-3521 Board; membership requirements; expenses.**

Each member of the board shall be a citizen of the United States and a resident of the State of Nebraska for at least one year immediately preceding his or her appointment. Each professional member shall have been engaged in the active practice of geology for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be licensed in geology. Each member of the board shall receive as

compensation the same per diem and travel expenses as other state employees for each day actually spent in traveling to and from and while attending sessions of the board and its committees or authorized meetings of the National Association of State Boards of Geology, or their subdivisions or committees, and all necessary expenses incident to the performance of his or her duties under the Geologists Regulation Act as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1998, LB 1161, § 69.

**81-3522 Board; certificate of appointment; Attorney General; duties; official seal; rules and regulations.**

Each member of the board shall receive a certificate of appointment from the Governor and, before beginning the term of office, shall file with the Secretary of State the constitutional oath of office. The board or any committee of the board is entitled to the services of the Attorney General in connection with the affairs of the board, and the board may compel the attendance of witnesses, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction. The Attorney General shall act as legal advisor to the board and render such legal assistance as may be necessary in carrying out the Geologists Regulation Act. The board may employ counsel and necessary assistance to aid in carrying out the act. The board shall adopt and have an official seal, which shall be affixed to all certificates of licensure granted, and shall adopt and promulgate rules and regulations to carry out the act.

**Source:** Laws 1998, LB 1161, § 70.

**81-3523 Board; meetings; quorum.**

The board shall hold at least one regular meeting each year. Special meetings shall be held as provided in the rules and regulations and at such places as the board elects. Notice of all meetings shall be given in such manner as provided in the rules and regulations. The board shall elect annually at its first meeting after March 1, from its members, a chairperson, vice-chairperson, and secretary. A quorum of the board shall consist of not less than five members.

**Source:** Laws 1998, LB 1161, § 71.

**81-3524 Geologists Regulation Fund; created; use; investment.**

The Geologists Regulation Fund is created. The secretary of the board shall receive and account for all money derived from the operation of the Geologists Regulation Act. The board shall remit the money to the State Treasurer for credit to the Geologists Regulation Fund, which shall be continued from year to year and shall be drawn against only as provided for in this section and, when reappropriated for the succeeding biennium, shall not revert to the General Fund. All expenses certified by the board as properly and necessarily incurred in the discharge of duties, including compensation and administrative staff, and any expense incident to the administration of the act relating to other states, shall be paid out of the fund. Warrants for the payment of expenses shall be issued by the Director of Administrative Services and paid by the State Treasurer upon presentation of vouchers regularly drawn by the chairperson and secretary of the board and approved by the board. At no time shall the total amount of warrants exceed the total amount of the fees collected under the act and to the credit of the fund. Any money in the 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.

**Source:** Laws 1998, LB 1161, § 72.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**81-3525 Roster.**

The secretary of the board shall publish a complete roster showing the names and last-known addresses of all professional geologists at intervals as established by board rules and regulations. The secretary shall file the roster with the Secretary of State and may mail a copy to each person so licensed as well as county and municipal officials. The secretary may also sell or distribute copies of the roster to the public.

**Source:** Laws 1998, LB 1161, § 73.

**81-3526 Code of practice; board; powers and duties.**

(1) The Legislature hereby finds and declares that a code of practice established by the board by which the members could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property of the citizens of this state.

(2) The code of practice established by this section shall include provisions on:

- (a) Professional competence;
- (b) Conflict of interest;
- (c) Full disclosure of financial interest;
- (d) Full disclosure of matters affecting public safety, health, and welfare;
- (e) Compliance with laws;
- (f) Professional conduct and good character standards; and
- (g) Practice of geology.

(3) The board may establish such code of practice through rules and regulations adopted and promulgated by the board.

(4) The board may publish commentaries regarding the code of practice. Such commentaries shall explain the meaning of interpretations given to the code by the board.

(5) The board shall have the power to suspend or revoke a geologist's licensure for a violation of the code of practice.

**Source:** Laws 1998, LB 1161, § 74.

**81-3527 Licensure; enrollment; application; fees.**

(1) Application for licensure as a geologist or enrollment as a geologist-intern shall be made on a form prescribed and furnished by the board. It shall contain statements made under oath showing the applicant's education and a detailed summary of technical experience and shall include the names and complete mailing addresses of the references, none of whom shall be members of the board. The board may accept the verified information contained in the National

Association of State Boards of Geology for applicants in lieu of the same information that is required on the form prescribed and furnished by the board.

(2) Application, licensure, and enrollment fees shall be established by the board and shall accompany the application. Original and reciprocal fees shall not exceed three hundred dollars for licensure as a geologist and one hundred dollars for enrollment as a geologist-intern and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration.

(3) The certificate of authorization fee for organizations shall be established by the board and shall accompany the application. The fee shall not exceed three hundred dollars per year.

(4) The fee for emeritus status shall be established by the board and shall accompany the application. The fee shall not exceed one hundred dollars per year.

(5) If the board denies the issuance of a certificate to any applicant, including the application of an organization for a certificate of authorization, the board shall retain the fee.

**Source:** Laws 1998, LB 1161, § 75; Laws 2004, LB 890, § 4.

**81-3528 Practice through organization; certificate of authorization; requirements.**

(1) The practice or offer to practice for others of geology by individuals licensed under the Geologists Regulation Act through an organization is permitted if the criteria for organizational practice established by the board are met and the organization has been issued a certificate of authorization by the board. All technical submissions by an organization involving the practice of geology when issued or filed for public record shall be dated and bear the signature and seal of the licensed geologist who prepared the submission or under whose immediate direction it was prepared.

(2) An organization desiring a certificate of authorization shall file with the board an application, using the form provided by the board, which also contains a list of the names and addresses of all officers of the organization, duly licensed to practice geology in the state through the organization. Any change in the list of officers during the certificate period shall be designated on the same form and filed with the board within thirty days after the effective date of the change. If the requirements of this section are met, the board shall issue a certificate of authorization to the organization and the organization may contract for and collect fees for furnishing professional services.

(3) The Geologists Regulation Act shall not prevent an organization from performing professional services for itself.

(4) An organization is not relieved of its responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section. An individual practicing geology is not relieved of his or her responsibility for services performed by reason of employment or any other relationship with an organization holding a certificate of authorization.

(5) Commencing one year after January 1, 1999, the Secretary of State shall not issue a certificate of authority to an applicant or a registration of name to a foreign firm to an organization which includes among the objectives for which it is established geology or any modification or derivation of geology, unless the

board has issued the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive a certificate of authorization. The organization shall supply the certificate or letter with its application for incorporation or licensure.

(6) Commencing one year after January 1, 1999, the Secretary of State shall not register any trade name or service mark which includes the words professional geologist, or any modification or derivative of such word, in its firm name or logotype except to those organizations holding a certificate of authorization issued by the board.

(7) The certificate of authorization shall be renewed periodically as required by the board.

(8) A geologist who renders occasional, part-time, or consulting services to or for an organization may not for purposes of this section be designated as being responsible for the professional activities of the organization.

**Source:** Laws 1998, LB 1161, § 76.

**81-3529 Certificate of licensure; seal; use; restrictions; enrollment card.**

(1) The board shall issue to any applicant who, on the basis of education, experience, and examination, has met the requirements of the Geologists Regulation Act a certificate of licensure giving the licensed geologist proper authority to carry out the prerogatives of the act. The certificate of licensure shall carry the designation Licensed Professional Geologist. The certificate of licensure shall give the full name of the licensee and the license number and shall be signed by the chairperson of the board and the secretary of the board.

(2) The certificate shall be prima facie evidence that the person is entitled to all rights, privileges, and responsibilities of a professional geologist while the certificate of licensure remains unrevoked and unexpired.

(3)(a) Each licensee authorized to practice geology must obtain a seal. It shall be unlawful for a licensee to affix his or her seal and signature or to permit his or her seal and signature to be affixed to any document after the expiration of the certificate of licensure or for the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of the act.

(b) The seal may be a rubber stamp or may be generated electronically. Whenever the seal is applied, the licensee's written signature and the date shall be across the seal. No further words or wording are required. Electronic signatures applied to electronic seals shall be protected with an electronic revision approval system. Documents without electronic revision approval system protection that are transmitted electronically to a client or a governmental agency shall have the seal removed from the file. The electronic media shall have the following inserted in lieu of the seal, signature, and date:

This document was originally issued and sealed by (name of sealer), (license number), on (date of sealing). This media should not be considered a certified document.

(c) The seal, signature, and date shall be placed on all technical submissions and calculations whenever presented to a client or any public or governmental agency.

(d) The seal, signature, and date shall be placed on all originals, copies, tracings, or other reproducible documents in such a manner that the seal, signature, and date will be reproduced. The application of the licensee's seal

and signature shall constitute certification that the work was done by the licensee or under the licensee's control. In the case of multiple sealings, the first or title page shall be sealed, signed, and dated by all involved. In addition, each sheet shall be sealed, signed, and dated by the licensee responsible for each sheet. In the case of an organization, each sheet shall be sealed, signed, and dated by the licensee involved. The geologist in responsible charge shall sign, seal, and date the title or first sheet.

(e) In the case of a temporary permit issued to a licensee of another state, the licensee shall use his or her state of licensure seal and shall affix his or her signature and temporary permit to all his or her work.

(f) The design of the seal shall be determined by the board. The following information shall be on the seal: State of Nebraska; licensee's name; licensee's license number; and the words Professional Geologist.

(g) The board shall issue to any applicant who, in the opinion of the board, has met the requirements of the act, an enrollment card as geologist-intern which indicates that his or her name has been recorded as such in the board office. The geologist-intern enrollment card does not authorize the holder to practice as a professional geologist.

**Source:** Laws 1998, LB 1161, § 77; Laws 2004, LB 890, § 5.

**81-3530 Seal and signature; use; restrictions.**

(1) A professional geologist shall only use his or her seal and signature when he or she was in responsible charge of the work being stamped.

(2) A professional geologist shall use his or her seal and signature on geologic reports, documents, maps, plans, logs, and sections, or other public records offered to the public and prepared or issued by or under the direct supervision of the professional geologist.

**Source:** Laws 1998, LB 1161, § 89.

**81-3531 Certificate of licensure; certificate of authorization; renewal; notice; fee; continuing education; authorized.**

Certificates of licensure and certificates of authorization shall expire on a date established by the board and shall become invalid after that date unless renewed. The secretary of the board shall notify every person licensed under the Geologists Regulation Act and every organization holding a certificate of authorization under the act of the date of the expiration of the certificate of licensure or certificate of authorization and the amount of the fee required for renewal. The notice shall be mailed to the licensee or organization at the last-known address on file with the board at least one month in advance of the date of the expiration. Renewal may be effected at any time prior to or during the period established by the board upon application and payment of a renewal fee. The fee shall not exceed two hundred dollars per year. Renewal of an expired certificate may be effected under rules and regulations of the board regarding requirements for reexamination and for penalty fees. The board may adopt a program of continuing education for individual licensees.

**Source:** Laws 1998, LB 1161, § 78.

**81-3532 Certificates; replacement; fee.**

A new certificate of licensure or certificate of authorization to replace any certificate lost, destroyed, or mutilated may be issued by the board. A fee not to exceed one hundred dollars shall be charged for each issuance.

**Source:** Laws 1998, LB 1161, § 79.

**81-3533 Enforcement of act.**

The board shall enforce the Geologists Regulation Act and the rules and regulations, including enforcement against any unlicensed person. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the Attorney General or the appropriate county attorney shall file an action for the enforcement of the decision or order, including injunctive relief, in the district court. After hearing, the court shall order enforcement of the decision or order, or any part thereof, if legally and properly made by the board and, if appropriate, injunctive relief.

**Source:** Laws 1998, LB 1161, § 80.

**81-3534 Practice of geology; restrictions.**

Except as provided in sections 81-3539 to 81-3541, an individual shall not directly or indirectly engage in the practice of geology in the state or use the title Professional Geologist or display or use any words, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that he or she is a geologist or is practicing geology unless he or she is licensed under the Geologists Regulation Act. A licensed geologist shall not aid or abet any person not licensed under the act in the practice of geology.

**Source:** Laws 1998, LB 1161, § 81.

**81-3535 Prohibited acts; penalties.**

Any person who performs any of the following actions is guilty of a Class II misdemeanor for the first offense and a Class I misdemeanor for the second or any subsequent offense:

(1) Practices or offers to practice geology in this state without being licensed in accordance with the Geologists Regulation Act and is not exempted by sections 81-3539 to 81-3541;

(2) Knowingly and willfully employs or retains a person to practice geology in this state who is not licensed in accordance with the act and who is not exempted by sections 81-3539 to 81-3541;

(3) Uses the word Geologist, or any modification or derivative of such word, in its name or form of business activity except as authorized in the act;

(4) Presents or attempts to use the certificate of licensure or the seal of another person;

(5) Gives any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of authorization;

(6) Falsely impersonates any other licensee of like or different name;

(7) Attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure or practices or offers to practice when not qualified;

(8) Falsely claims that he or she is licensed or authorized under the act; or

(9) Violates any of the provisions of the act.

**Source:** Laws 1998, LB 1161, § 82.

**81-3536 Violation of act; charges; board; duties; hearing.**

Charges against any person involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board. The charges, at the discretion of the board, shall be heard within a reasonable time in accordance with the rules and regulations which may include use of a hearing officer. The accused shall have the right to appear personally with or without counsel, to cross-examine adverse witnesses, and to produce evidence and witnesses in his or her defense. The board shall set the time and place for the hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused, at his or her last-known business or residence address known to the board, at least thirty days before the hearing. If, after the hearing, the board finds the accused has violated the Geologists Regulation Act or any rules or regulations, it may issue any order described in section 81-3537. If the board finds no violation, it shall enter an order dismissing the charges. If the order revokes, suspends, or cancels a license, the board shall notify, in writing, the Secretary of State and the clerk of the city or village in the state where the person has a place of business, if any. The board may reissue a license to any person whose license has been revoked. Application for the reissuance of a license shall be made in such a manner as the board directs and shall be accompanied by a fee established by the board.

**Source:** Laws 1998, LB 1161, § 83.

**81-3537 Violation of act; disciplinary action; penalties.**

(1) The board may after hearing, by majority vote, take any or all of the following actions, upon proof satisfactory to the board that any person or organization has violated the Geologists Regulation Act or any rules or regulations adopted and promulgated pursuant to the act:

- (a) Issuance of censure or reprimand;
- (b) Suspension of judgment;
- (c) Placement of the offender on probation with the board;
- (d) Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;
- (e) Imposition of a civil penalty not to exceed ten thousand dollars. The amount of the penalty shall be based on the severity of the violation;
- (f) Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;
- (g) Issuance of a cease and desist order;
- (h) Imposition of costs as in an ordinary civil action in the district court, which may include attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or
- (i) Dismissal of the action.

In hearings under this section, the board may take into account suitable evidence of reform.

(2) Civil penalties collected under subdivision (1)(e) of this section shall be remitted to the State Treasurer for credit to the permanent school fund. All costs collected under subdivision (1)(h) of this section shall be remitted to the State Treasurer for credit to the Geologists Regulation Fund.

**Source:** Laws 1998, LB 1161, § 84.

**81-3538 Repealed. Laws 2005, LB 544, § 1.**

**81-3539 Licensure; enrollment; applicant; qualifications.**

Applications for licensure as a professional geologist, for temporary or reciprocal licensure, or for enrollment as a geologist-intern shall be on forms prescribed and furnished by the board and shall be accompanied by the fee established by the board. The requirements of subdivisions (1) through (3) of this section may be considered by the board to be fulfilled if the applicant maintains a current certificate of licensure to practice geology issued pursuant to the authority of any state or possession of the United States or the District of Columbia based on requirements that do not conflict with the Geologists Regulation Act and were of a standard not lower than that specified in the applicable licensure law in effect in this state at the time the certification was issued. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional geologist or enrollment as a geologist-intern:

(1) The applicant is of good character and reputation and submits four references with his or her application for licensure as a professional geologist. Two of the references shall be professional geologists having personal knowledge of his or her geological experience or, in the case of the application for enrollment as a geologist-intern, acting only as character references;

(2) The applicant has successfully completed a minimum of thirty semester hours or forty-five quarter hours of course work in geology and has received a baccalaureate or advanced degree in geology or a geologic specialty from a program accredited by an organization recognized by the board;

(3) The applicant has a documented record of a minimum of five years of progressive experience, obtained subsequent to completion of the education requirements, in geologic work of a grade and character which indicates to the board that the applicant is qualified to assume responsible charge of such work upon licensure as a geologist, except that no work experience is required for enrollment as a geologist-intern; and

(4) The applicant has completed an examination covering the fundamentals and practice of geology prescribed by the board. Upon passing the fundamentals of geology examination, the applicant may be enrolled as a geologist-intern. Upon passing the practice of geology examination, the applicant shall be granted a certificate of licensure to practice geology in this state if otherwise qualified. A person who holds a valid certificate of licensure to engage in the practice of geology, issued pursuant to the authority of any state or possession of the United States or the District of Columbia based on requirements that do not conflict with the act and were of a standard not lower than that specified in the applicable licensing law in effect in this state at the time the certificate was issued, may, upon application, be licensed without further examination. Geo-

logic teaching of advanced subjects and the design of geologic research and projects in a college or university offering an accredited geologic curriculum may be considered by the board as geologic experience.

**Source:** Laws 1998, LB 1161, § 86; Laws 2004, LB 890, § 6.

**81-3540 Geology examinations.**

(1) The board shall direct the time and place of geology examinations. The board shall determine the acceptable grade on examinations.

(2) The examination shall be given in two sections as follows:

(a) A fundamentals of geology examination designed to test the academic preparation of the applicant in geology. At the board's discretion, the examination may be taken at any time following completion of the applicant's educational requirements. Passing this examination qualifies the examinee for a geologist-intern enrollment card, if all other requirements for enrollment as a geologist-intern are met; and

(b) A principles and practice of geology examination designed to test the applicant's ability to apply geologic knowledge and to assume responsible charge of geologic work. The geologic practice examination may be taken only after the applicant has acquired the experience required for licensure as a geologist.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. In the event of a second failure, the examinee may, at the discretion of the board, be required to appear before the board with evidence of having acquired the necessary additional knowledge to qualify before admission to the examination.

(4) The board may prepare and adopt specifications for the examinations. The specifications shall be published and be available to any person interested in being licensed.

**Source:** Laws 1998, LB 1161, § 87; Laws 2004, LB 890, § 7.

**81-3541 Licensure; activities exempt.**

(1) The following activities do not require licensure as a geologist under the Geologists Regulation Act:

(a) Geological work performed by an employee or a subordinate of a professional geologist if the work does not include responsible charge of geological work and is performed under the direct supervision of a professional geologist who is and remains responsible for such work;

(b) Geological work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, and not having a substantial impact upon the public health, safety, and welfare, as determined by the board;

(c) Geologic research conducted through academic institutions, agencies of the federal or state governments, or nonprofit research institutions;

(d) Teaching in geology or related physical or natural sciences;

(e) Work performed by a professional engineer appropriately licensed in this state that is within the generally accepted scope of engineering practice;

(f) The practice of any other legally recognized profession;

(g) The practice of or offer to practice geology by a person not a resident of and having no established place of business in this state who desires to practice geology for a specific project. The person shall make application to the board in writing, and after payment of a fee established by the board by rule and regulation, such person may be issued a temporary permit for a definite period of time not to exceed one year if the person is legally qualified by licensure to practice geology in his or her own state or country. No right to practice geology shall accrue to such applicant with respect to any other work not set forth in the permit;

(h) Work, which includes subsurface excavation, soil and water analysis, and routine environmental monitoring, such as sample collection and water level gauging, performed by an organization for itself and in accordance with other requirements of law;

(i) The work of employees of a political subdivision or state agency charged with natural resources conservation performing, in accordance with other requirements of law, their customary duties in operations, maintenance, and environmental monitoring;

(j) The work of employees and agents of a political subdivision or rural electric cooperative performing, in accordance with other requirements of law, their customary duties in routine utility line construction, operations, and maintenance;

(k) Work customarily performed by chemists, hydrologists, archeologists, geographers, pedologists, agronomists, and soil scientists; and

(l) Work performed in the construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells.

(2) If the board determines with respect to a particular function that the public is adequately protected without the necessity of a professional geologist performing certain services, the board may waive the requirements of the act with respect to the function.

(3) This section shall not be construed so as to prohibit the testimony of any individual before the Nebraska Oil and Gas Conservation Commission.

**Source:** Laws 1998, LB 1161, § 88; Laws 1998, LB 1209, § 31; Laws 2007, LB664, § 1.

## ARTICLE 36

### RURAL DEVELOPMENT COMMISSION

#### Section

- 81-3601. Rural Development Commission; created.
- 81-3602. Rural Development Commission; members; terms; meetings; expenses.
- 81-3603. Rural Development Commission; duties.
- 81-3604. Rural Development Commission; powers.
- 81-3605. Rural Development Commission; report.
- 81-3606. Rural Development Cash Fund; created; use; investment.
- 81-3607. Nebraska Development Network Program; created; commission; powers and duties.
- 81-3608. Nebraska Development Network Program; programs and strategies.
- 81-3609. Legislative findings.

#### **81-3601 Rural Development Commission; created.**

There is hereby created the Rural Development Commission. The commission shall advocate and recommend programs that encourage regional cooperation

and foster community sustainability and economic development initiatives in rural areas of Nebraska. The chairperson and vice-chairperson of the commission shall supervise the hiring of the executive director using the state personnel hiring process and may employ personnel necessary to carry out the powers and duties of the commission. The Lieutenant Governor, the Governor's Policy Research Office, the Department of Economic Development, the Department of Agriculture, and other state agencies may provide administrative and technical support under the direct supervision of the Governor. The commission may secure cooperation and assistance of other appropriate government and private-sector entities specifically for rural programs.

**Source:** Laws 1993, LB 190, § 1; R.S.1943, (1994), § 81-1282; Laws 1998, LB 1053, § 1; Laws 2003, LB 48, § 3.

**81-3602 Rural Development Commission; members; terms; meetings; expenses.**

(1)(a) The Rural Development Commission shall consist of members who represent a wide range of rural Nebraska interests.

(b) The Governor shall appoint four members to the commission. The Governor shall appoint a representative of his or her office and one representative from each of the Department of Economic Development, the Department of Agriculture, and the Department of Health and Human Services.

(c) The Speaker of the Legislature shall appoint one member of the Legislature to the commission.

(d) Other members shall be appointed by the Governor to represent federal agencies, local governments, tribal governments, nonprofit organizations, regional economic development organizations, the private sector, postsecondary education, and youth.

(e) The chairperson and vice-chairperson of the commission shall be elected by a majority of the members of the commission at the first commission meeting in odd-numbered years and shall each serve a two-year term as chairperson and vice-chairperson, respectively.

(2) The commission shall meet at the call of the chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the commission. A quorum shall be one-half of the members.

(3) The members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the commission.

**Source:** Laws 1993, LB 190, § 2; R.S.1943, (1994), § 81-1283; Laws 1998, LB 1053, § 2; Laws 2003, LB 48, § 1; Laws 2003, LB 48, § 3; Laws 2007, LB296, § 777.

**81-3603 Rural Development Commission; duties.**

The Rural Development Commission shall:

(1) Focus attention on and increase awareness of the opportunities and needs of rural Nebraskans;

(2) Advocate for rural Nebraska by proposing solutions to rural challenges;

- (3) Strengthen community sustainability and growth in rural Nebraska through increased community-based wealth creation, expanded economic opportunity, and improved quality of life;
- (4) Stimulate rural development innovation and foster information transfer to, from, and within rural Nebraska;
- (5) Encourage and support continuity, coordination, and cooperation among national, state, multicommunity, and local rural development initiatives and service providers;
- (6) Ensure that rural Nebraskans are afforded the opportunity to determine rural Nebraska's development agenda;
- (7) Serve as an advisory body to the Governor, state agencies, and the Legislature on rural development issues;
- (8) Establish an information clearinghouse on rural challenges and needs, development services, model initiatives, available resources, and service providers;
- (9) Foster community-based development initiatives through multicommunity partnerships;
- (10) Support strategic planning and research for and evaluation of rural development initiatives and service providers by administering the Nebraska Development Network Program;
- (11) Serve as Nebraska's rural development council within the meaning of the National Rural Development Partnership by providing inventories, reports, assessments, and implementation plans as appropriate; and
- (12) Participate in the Partnership for Rural Nebraska.

**Source:** Laws 1993, LB 190, § 3; R.S.1943, (1994), § 81-1284; Laws 1998, LB 1053, § 3; Laws 2003, LB 48, § 3.

**81-3604 Rural Development Commission; powers.**

The Rural Development Commission may:

- (1) Appoint nonvoting members, obtain advisors, create task forces composed of noncommission members, or engage in other appropriate activities necessary in completing the commission's duties;
- (2) Issue reports, recommendations, or other communications as deemed necessary by a majority of voting members of the commission;
- (3) Adopt operating procedures and guidelines; and
- (4) Engage in other activities relevant and appropriate to its purpose, duties, and powers.

In addition, the commission may receive or apply for and receive gifts, grants, contributions, and other funds from the federal government, private agencies, affiliated associations, and individuals and contract with public and private groups to conduct its business.

**Source:** Laws 1993, LB 190, § 4; R.S.1943, (1994), § 81-1285; Laws 1998, LB 1053, § 4; Laws 2003, LB 48, § 3.

**81-3605 Rural Development Commission; report.**

On or before February 15 of each year, the executive director of the Rural Development Commission shall transmit to the Governor and the Clerk of the

Legislature an annual report which includes a summary of the commission's activities, recommendations for future rural development action, and an accounting of the source and use of funds disbursed during the previous fiscal year.

**Source:** Laws 1993, LB 190, § 5; R.S.1943, (1994), § 81-1286; Laws 1998, LB 1053, § 5; Laws 2003, LB 48, § 3.

**81-3606 Rural Development Cash Fund; created; use; investment.**

There is hereby created the Rural Development Cash Fund which shall be used by the Rural Development Commission for the purposes of sections 81-3601 to 81-3605. Money credited to the fund shall include any monetary gifts, grants, and donations, proceeds from contracts for services, and reimbursements of expenses. Any grant funds under the National Rural Development Partnership received by the State of Nebraska from the United States Department of Agriculture shall be allocated to the commission. Any money in the 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.

**Source:** Laws 1993, LB 190, § 6; Laws 1994, LB 1066, § 109; R.S.1943, (1994), § 81-1287; Laws 1998, LB 1053, § 6; Laws 2003, LB 48, § 2; Laws 2003, LB 48, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**81-3607 Nebraska Development Network Program; created; commission; powers and duties.**

The Nebraska Development Network Program is created in the Rural Development Commission. The commission shall administer the program and may contract for services to carry out the purposes of the Nebraska Development Network Program.

**Source:** Laws 1998, LB 1053, § 7; Laws 2003, LB 48, § 3.

**81-3608 Nebraska Development Network Program; programs and strategies.**

The Nebraska Development Network Program shall create and support community and regional development capacity enhancement programs and strategies throughout Nebraska that:

(1) Recognize shared local, regional, and state responsibility for shaping the community's and the region's economic future and generate and focus public and private resources on effective actions that help communities and businesses to grow and prosper;

(2) Encourage public-private partnerships in order to leverage and enhance public resources through private investment;

(3) Increase the resources directed toward economic development by building support within communities and assisting communities in planning their own economic futures by providing them with comprehensive information about the principles of community and economic development, including the concepts of entrepreneurial communities, strategic planning, leadership train-

ing, community development, and effective sustainable economic development; and

(4) Support the work of the Nebraska Development Network regional groups.

**Source:** Laws 1998, LB 1053, § 8; Laws 2003, LB 48, § 3.

**81-3609 Legislative findings.**

The Legislature finds and declares:

(1) That it is a benefit to the state and in the best interest of the citizens of Nebraska to deliver economic and community development services in an integrated and coordinated system through increased community, state, and federal cooperation and collaboration;

(2) That the Partnership for Rural Nebraska is recognized as a strategic partnership between the State of Nebraska, the University of Nebraska, and the United States Department of Agriculture, the purpose of which is to provide a formal structure of organizational collaboration and delivery of rural economic and community development resources and programs to Nebraska's rural communities;

(3) That the Partnership for Rural Nebraska has earned national recognition as a model for cooperative and collaborative delivery of services; and

(4) That it encourages the continued participation of the State of Nebraska, through the Department of Economic Development, the Rural Development Commission, and the University of Nebraska, in the Partnership for Rural Nebraska.

**Source:** Laws 1998, LB 1053, § 9; Laws 2003, LB 48, § 3.



## STATE CULTURE AND HISTORY

# CHAPTER 82

## STATE CULTURE AND HISTORY

### Article.

1. Nebraska State Historical Society. 82-101 to 82-136.
2. Historical Land Mark Council. Transferred or Repealed.
3. Nebraska Arts Council. 82-301 to 82-333.
4. Nebraska Art Collection Act. 82-401 to 82-408.
5. Nebraska Archaeological Resources Preservation Act. 82-501 to 82-510.

### Cross References

**Building**, heating and lighting, see section 81-1108.26.

**Historic sites**, monuments and markers erected by county, see sections 23-351 to 23-355.01.

**Historical works**, presumptive evidence, see section 25-1218.

**Monuments**, authority to erect, see section 80-201 et seq.

### Museums:

Cities, establish and maintain:

Cities of the first class, see section 16-251.

Cities of the metropolitan class, see section 14-102.

Local, establish, see section 51-501 et seq.

**Records Management Act**, see section 84-1220.

## ARTICLE 1

### NEBRASKA STATE HISTORICAL SOCIETY

#### Section

- 82-101. Nebraska State Historical Society; state agency; board; membership in society; purpose; acceptance of gifts; operation of historical sites and museums.
- 82-101.01. Board of trustees; membership; terms; nominating committee; election; expenses.
- 82-101.02. Board of trustees; powers and duties; Nebraska State Historical Society Collections Trust Fund; created.
- 82-102. Nebraska State Historical Society; reports; contents.
- 82-103. Nebraska State Historical Society; publications.
- 82-104. Nebraska State Historical Society; public documents, records, relics; custodian.
- 82-105. Nebraska State Historical Society; public documents, records, relics; obtaining possession; procedure.
- 82-106. Nebraska State Historical Society; public documents, records, relics; notice to be given.
- 82-107. Nebraska State Historical Society; public documents, records, relics; procedure after notice.
- 82-108. Nebraska State Historical Society; documents and records; certified copies; fees.
- 82-108.01. Repealed. Laws 1994, LB 1236, § 4.
- 82-108.02. Historical Society Fund; created; use; investment.
- 82-109. Nebraska State Historical Society; documents relating to General Land Office; agreement with United States Land Office.
- 82-110. Documents relating to General Land Office; preservation and maintenance; federal authorities; free access.
- 82-111. Historical monuments; defacing prohibited; penalty.
- 82-112. Pioneers' Memorial Day.
- 82-113. Repealed. Laws 1957, c. 304, § 1.
- 82-114. Kennard home; Nebraska Statehood Memorial; designated.
- 82-115. Nebraska Statehood Memorial; Nebraska State Historical Society; restoration.

- Section
- 82-116. Repealed. Laws 1981, LB 497, § 1.
- 82-117. Nebraska Statehood Memorial; Nebraska State Historical Society; administration; maintenance; gifts, grants, bequests; accept.
- 82-118. Nebraska State Historical Society; statewide historic survey; acceptance of federal act.
- 82-119. Nebraska State Historical Society; powers and duties.
- 82-120. Nebraska State Historical Society; selection of projects; procurement of markers; purchase, gift, or eminent domain; erection and maintenance.
- 82-121. Nebraska State Historical Society; powers; delegation to subcommittees.
- 82-122. Nebraska State Historical Society; markers damaged or destroyed; replacement.
- 82-123. Historical markers; erection or maintenance; written consent of society required.
- 82-124. Violations; penalty; malicious damage; recovery of replacement costs.
- 82-125. Nebraska State Historical Society; property known as Neligh Mills; acquire title; cost; limitation; maintenance.
- 82-126. Nebraska State Historical Society; visitations to sites and monuments; restrict; signs; notices; violation; penalty.
- 82-127. Historical Heritage Center; location; how designated; Nebraska State Historical Society; duties; powers.
- 82-128. Nebraska State Historical Society; acquire property of John G. Neihardt; erect structure; agreement; administration.
- 82-129. Nebraska State Historical Society; acquire property of Willa Cather Pioneer Memorial and Educational Foundation; Willa Cather Center; operation agreements.
- 82-130. Willa Cather Pioneer Memorial and Educational Foundation; real property; legal description.
- 82-131. George Norris House; designated.
- 82-132. George Norris House; Nebraska State Historical Society; powers and duties.
- 82-133. Repealed. Laws 1993, LB 321, § 5.
- 82-134. Transferred to section 72-1802.
- 82-135. Repealed. Laws 1993, LB 321, § 5.
- 82-136. Transferred to section 72-1801.

**82-101 Nebraska State Historical Society; state agency; board; membership in society; purpose; acceptance of gifts; operation of historical sites and museums.**

The Nebraska State Historical Society, operated in the public interest since 1878, is hereby declared to be and does hereby consent to be a state agency on and after July 16, 1994. The society shall hold, in trust for the people of the State of Nebraska, all of the society's present and future collections of property. The agency shall be under the direction of a board of trustees who shall be elected in part by the members of the society and in part appointed by the Governor as provided in section 82-101.01. Membership in the society shall be open to all persons interested in the accomplishment of the purposes of the society. In addition to all other objects and purposes provided by law, the object of the society shall be to promote historical knowledge and research, awaken public interest, and popularize historical study throughout the state in a nonpolitical manner. The society's headquarters and museum in Lincoln shall be used by the society for the preservation, care, research, and exhibition of and research into documents, books, newspapers, weapons, tools, pictures, relics, scientific specimens, farm and factory products, and all other collections pertaining to the history of the world, particularly to that of Nebraska and the West. The society shall have the power to accept gifts and to own, control, and dispose of property, real and personal. It shall, either alone or in cooperation

with other agencies, operate historical sites and museums as agreed to with appropriate state agencies or as directed by the Governor and the Legislature.

**Source:** Laws 1883, c. 95, § 1, p. 340; Laws 1907, c. 146, § 1, p. 458; R.S.1913, § 7166; C.S.1922, § 6817; C.S.1929, § 82-101; R.S. 1943, § 82-101; Laws 1961, c. 438, § 1, p. 1356; Laws 1994, LB 1236, § 1.

**82-101.01 Board of trustees; membership; terms; nominating committee; election; expenses.**

(1) The initial board of trustees shall be comprised of the current members of the society's board of directors. As their terms expire under the society's presently existing bylaws, their successors shall be selected. Those outgoing board members who were elected shall be replaced by trustees elected by the society's membership as provided in this section. Those outgoing board members who were gubernatorial appointments shall be replaced by trustees appointed by the Governor. The trustees who are elected shall be elected for three-year terms from the same congressional district as the trustees whose terms have expired. The trustees selected by the Governor shall be appointed for three-year terms from the same congressional district as the trustees whose terms have expired.

(2) A nominating committee comprised of society members, one from each of the congressional districts, shall be appointed each year by the president of the board of trustees with the approval of the board of trustees. Such appointments shall be made at least one hundred twenty days prior to the date of the annual meeting of the members. The nominating committee shall file, in writing, its slate of nominees for trustee with the secretary of the society not later than ninety days prior to the date of the annual meeting. Thereafter, additional nominations may be made for trustee by written petition filed by not less than twenty-five active members of the society, which petition shall be filed with the secretary of the society not later than sixty days prior to the annual meeting. Candidates nominated by the nominating committee shall file a similar petition. Not later than thirty days prior to the date of the annual meeting, the secretary of the society shall mail a ballot listing the names of the nominees to the active members of the society eligible to vote, to be marked by the members and returned to the secretary. Such returned ballots must be received by the secretary at least ten days prior to the date of the annual meeting in order to be counted. The board of trustees shall adopt a system of ballot certification insuring a secret ballot and that the person submitting the ballot is a society member entitled to vote. The returned ballots shall be counted by the secretary of the society, and the names of the successful candidates shall be announced at the annual meeting. The ballots shall be retained until after the annual meeting and shall be available for inspection by any member prior to the annual meeting. All members of the nominating committee, all members signing a nominating petition, and all members who are entitled to cast a ballot must be active members of the society who are in good standing. A member shall be considered in good standing when the member has fulfilled all requirements for membership. All general and other specified classes of members shall be eligible to vote for election or to be chosen as an officer or trustee or to serve as a member of the nominating committee. Only nominees named on the ballot shall be eligible for election. The candidate for a particular trustee post receiving the highest number of votes shall be declared elected even though

such votes do not constitute a majority of the votes cast for such post. When two trustees are elected from a congressional district for a certain term, those declared elected shall be the two receiving the highest number of votes cast for such term, even though one or both fail to receive a majority of the votes cast for such term.

(3) The term of each trustee shall begin on January 1 of the year following the year of his or her election or appointment and shall end on December 31 of the final year of the term to which the member was elected or appointed.

(4) No trustee shall be eligible to serve for more than two full consecutive three-year terms but may be eligible for election or appointment to the board of trustees after having not served for at least a period of three years.

(5) In the event a vacancy occurs on the board of trustees, the board of trustees shall fill the position of an elected trustee for the remainder of the unexpired term and the Governor shall fill the position of an appointed trustee for the remainder of the unexpired term.

(6) In the event the boundaries of the congressional districts are altered or increase or decrease in number, the trustees shall continue to serve the term for which they were elected or appointed. Thereafter, the board of trustees shall be adjusted so as to be in accordance with the boundaries and number of congressional districts.

(7) Members of the board of trustees shall serve without pay. The trustees shall receive remuneration for travel and expenses incurred while engaged in the business of the society.

**Source:** Laws 1994, LB 1236, § 2.

**82-101.02 Board of trustees; powers and duties; Nebraska State Historical Society Collections Trust Fund; created.**

In accordance with applicable law, the powers and duties of the board of trustees shall be as follows:

(1) To establish a date, time, and location for an annual meeting of the society and promulgate same and to elect annually from among their number a president, a first vice president, a second vice president, and a treasurer;

(2) To adopt bylaws not inconsistent with state statutes for their own governance and to administer the society in the interests of preserving the rich heritage of this state and its people;

(3) To select a director or chief executive officer who shall also serve as secretary to the board of trustees, and to prescribe the director's duties and responsibilities;

(4) To create a general membership class which shall be open to all persons interested in the accomplishment of the purposes of the society, and the active members of such class shall be eligible to vote and shall not be required to pay membership dues;

(5) To create such other classes of membership in the society as the board deems desirable, to determine the qualifications for such classes of membership, and to set the fees to be paid for such memberships;

(6) To create such committees as the board deems advisable and delegate to the committees those functions which aid in the efficient administration of the affairs of the society;

(7) To, according to appropriate museum and archival standards, collect, assemble, preserve, classify, and exhibit, where appropriate, all books, pamphlets, maps, manuscripts, newspapers, photographs, business records, personal papers, diaries, architectural records, works of art, films, videotapes, machine-readable records, museum, archeological, and ethnographic specimens, and all other objects regardless of physical form that serve to illustrate the history of Nebraska and the Great Plains in particular, or of western America in general;

(8) To ensure that the collections and properties of the society are maintained in good order and repair;

(9) To accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Notwithstanding any provisions to the contrary, the Nebraska State Historical Society may accept a gift of any property other than real estate without prior permission of any other governmental entity, including the Governor;

(10) To contract and enter into agreements necessary to effectuate the objects and purposes of the society;

(11) To sell, exchange, or otherwise dispose of books, museum objects, or other property in the society's collections that are surplus, duplicate, outside the scope of the society's mission, or which lack research, educational, or exhibit value on account of damage or insufficient documentation. Such sums as are derived from the sale or disposition of property that is surplus, duplicate, outside the scope of the society's mission, or which lacks research, educational, or exhibit value on account of damage or insufficient documentation shall be remitted to the State Treasurer for credit to the Nebraska State Historical Society Collections Trust Fund, which fund is hereby established. The fund shall be administered by the society. The fund shall be used, in accordance with appropriate museum and archival standards, exclusively for the acquisition, preservation, or restoration of the society collections;

(12) To disseminate and interpret the results of the society's research through publications, exhibitions, reports, public programs, and all other appropriate methods which will promote the study, understanding, and appreciation of Nebraska history; and

(13) To adopt and promulgate all policies, rules, and regulations, not inconsistent with law, that are necessary to implement the objects and purposes of the society.

**Source:** Laws 1994, LB 1236, § 3.

#### **82-102 Nebraska State Historical Society; reports; contents.**

The president and secretary of the Nebraska State Historical Society shall make biennial reports to the Governor of its transactions. The report shall include the transactions and expenditures of the society, together with all historical addresses which have been read before the society during the preceding two years, or which furnish historical matter on data of the state and adjacent western regions.

**Source:** Laws 1883, c. 95, § 2, p. 340; R.S.1913, § 7167; C.S.1922, § 6818; C.S.1929, § 82-102; R.S.1943, § 82-102; Laws 1955, c. 231, § 21, p. 728; Laws 1981, LB 545, § 38.

**82-103 Nebraska State Historical Society; publications.**

The reports, addresses and papers mentioned in section 82-102 shall be published at the expense of the state and distributed as other similar official reports are distributed. The state and society shall decide upon a reasonable number of the published reports, which shall be furnished to the society for its use and distribution.

**Source:** Laws 1883, c. 95, § 3, p. 341; R.S.1913, § 7168; C.S.1922, § 6819; C.S.1929, § 82-103.

**82-104 Nebraska State Historical Society; public documents, records, relics; custodian.**

The Nebraska State Historical Society shall be the custodian of all public records, documents, relics, and other material which the society may consider to be of historic value or interest, and which may be in any of the offices or vaults of the several departments of the state, in any of the institutions which receive appropriations of money from the Legislature of Nebraska, or in any of the county courthouses, city halls, or other public buildings within the State of Nebraska.

**Source:** Laws 1905, c. 157, § 1, p. 604; R.S.1913, § 7169; C.S.1922, § 6820; C.S.1929, § 82-104.

**82-105 Nebraska State Historical Society; public documents, records, relics; obtaining possession; procedure.**

The Nebraska State Historical Society shall obtain possession of the historical material mentioned in section 82-104 whenever it is not in active use in any department, institution or building, or whenever it is liable to damage and destruction because of a lack of proper means to care for, or safe and adequate place to preserve it. The officer or board having the care and management of the department, institution or building shall consent in writing to the custody of the documents, records and materials by the society. The society shall prepare invoices and receipts in triplicate for the material turned over to the society, and shall deliver one copy to the Secretary of State, one copy to the officer or board turning over the material, and one copy shall be retained by the secretary of the society.

**Source:** Laws 1905, c. 157, § 2, p. 604; R.S.1913, § 7170; C.S.1922, § 6821; C.S.1929, § 82-105; R.S.1943, § 82-105; Laws 1969, c. 810, § 1, p. 3047.

**82-106 Nebraska State Historical Society; public documents, records, relics; notice to be given.**

Every officer or board having control or management of any state department, institution or building shall notify the secretary of the Nebraska State Historical Society whenever any of the historical material mentioned in sections 82-104 and 82-105 shall be in his or their care.

**Source:** Laws 1905, c. 157, § 3, p. 605; R.S.1913, § 7171; C.S.1922, § 6822; C.S.1929, § 82-106.

**82-107 Nebraska State Historical Society; public documents, records, relics; procedure after notice.**

Whenever the secretary of the Nebraska State Historical Society has received notice as provided for in section 82-106, the society shall, by its officers or employees, examine the material and remove and receipt for whatever material the society may deem to be of historic value. The society shall transport the material at its own cost to its museum, and shall catalog, arrange and display the material for the free use of the public.

**Source:** Laws 1905, c. 157, § 4, p. 605; R.S.1913, § 7172; C.S.1922, § 6823; C.S.1929, § 82-107.

**82-108 Nebraska State Historical Society; documents and records; certified copies; fees.**

The secretary or curator of the Nebraska State Historical Society shall prepare certified copies of any record, document or other material, of which the society is the custodian, whenever application shall be made to the society. Such certified copies shall be received in courts and elsewhere as being of the same legal validity as similar copies prepared by the original custodian of the record, document or other material. The secretary or curator of the society shall be entitled to the same fees for making certified copies as the original custodian would be.

**Source:** Laws 1905, c. 157, § 5, p. 605; R.S.1913, § 7173; C.S.1922, § 6824; C.S.1929, § 82-108.

**82-108.01 Repealed. Laws 1994, LB 1236, § 4.**

**82-108.02 Historical Society Fund; created; use; investment.**

All funds received by the Nebraska State Historical Society for services rendered shall be remitted to the State Treasurer for credit to the Historical Society Fund which is hereby established. Funds to the credit of the fund shall only be expended, as and when appropriated by the Legislature, by the Nebraska State Historical Society for the general purposes of such society. Any money in the 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.

**Source:** Laws 1961, c. 439, § 1, p. 1357; Laws 1969, c. 584, § 110, p. 2416; Laws 1995, LB 7, § 138.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**82-109 Nebraska State Historical Society; documents relating to General Land Office; agreement with United States Land Office.**

The Nebraska State Historical Society is authorized to enter into an agreement with the General Land Office at Washington, D.C., for the reception, preservation, organization and arrangement for public use of all documents relating to the former United States Land Offices in Nebraska that may be transferred from the custody of the General Land Office at Washington, D.C., to the custody of the society.

**Source:** Laws 1937, c. 196, § 1, p. 818; C.S.Supp.,1941, § 82-114.

**82-110 Documents relating to General Land Office; preservation and maintenance; federal authorities; free access.**

All documents obtained from the General Land Office at Washington, D.C., shall be preserved and maintained as a part of the public records of Nebraska by the Nebraska State Historical Society, and by all other persons in such manner as shall secure the chief objects of their use and preservation, their care, custody and service, under proper library regulations. The authorities of the United States shall have free access to such documents.

**Source:** Laws 1937, c. 196, § 2, p. 819; C.S.Supp.,1941, § 82-115.

**82-111 Historical monuments; defacing prohibited; penalty.**

Any person who shall destroy, deface, remove or injure any of the monuments erected by the state to mark the Oregon Trail in Nebraska shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1911, c. 134, § 4, p. 447; R.S.1913, § 7177; C.S.1922, § 6828; C.S.1929, § 82-112; R.S.1943, § 82-111; Laws 1977, LB 39, § 306.

**82-112 Pioneers' Memorial Day.**

The second Sunday in June in each year shall be Pioneers' Memorial Day, and shall be set apart for holding suitable exercises in the schools and churches of the state, and, when possible, in the cemeteries and over the graves of pioneers, in recognition of the men and women who served and sacrificed as pioneers in the settlement of Nebraska.

**Source:** Laws 1913, c. 171, § 1, p. 523; R.S.1913, § 7178; C.S.1922, § 6829; C.S.1929, § 82-113.

**82-113 Repealed. Laws 1957, c. 304, § 1.****82-114 Kennard home; Nebraska Statehood Memorial; designated.**

The Thomas P. Kennard home, located at 1627 H Street in Lincoln, including lot 3, Block 153, of the original plat of Lincoln, is hereby designated as the Nebraska Statehood Memorial.

**Source:** Laws 1965, c. 556, § 1, p. 1839.

**82-115 Nebraska Statehood Memorial; Nebraska State Historical Society; restoration.**

The Nebraska State Historical Society shall be responsible for the restoration of the Nebraska Statehood Memorial. The exterior shall be restored as nearly as may be to its appearance in 1870. The interior shall be restored as nearly as may be to its original appearance and arrangement, and shall be refurnished with authentic period furniture and other materials which relate to the establishment and development of Nebraska state government.

**Source:** Laws 1965, c. 556, § 2, p. 1839.

**82-116 Repealed. Laws 1981, LB 497, § 1.****82-117 Nebraska Statehood Memorial; Nebraska State Historical Society; administration; maintenance; gifts, grants, bequests; accept.**

The Nebraska State Historical Society shall be responsible for the administration and continued maintenance of the Nebraska Statehood Memorial and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1965, c. 556, § 4, p. 1839.

**82-118 Nebraska State Historical Society; statewide historic survey; acceptance of federal act.**

The State of Nebraska hereby assents to the provisions of an Act of Congress entitled An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes, approved October 15, 1966, Public Law 89-665, 89th Congress, as amended as of January 1, 1993. The Nebraska State Historical Society shall perform all such acts as may be necessary on behalf of the State of Nebraska to conduct, coordinate, and carry out the purposes and objectives of such Act of Congress, as amended as of January 1, 1993, for and within the State of Nebraska. The society shall carry out a comprehensive statewide historic survey in accordance with criteria established by the Secretary of the Interior for the preservation, acquisition, and development of such property as provided in the Act of Congress, as amended as of January 1, 1993, and may transfer funds made available to the state to other state agencies, local governments, other public bodies, private organizations, and individuals for the acquisition of title or interests in and for the development of any district, site, building, structure, or object that is significant in American history, architecture, archeology, and culture, or property used in connection therewith, and for its development in order to assure the preservation for public benefit of any such historic properties in compliance with such Act of Congress, as amended as of January 1, 1993, and with rules and regulations promulgated by the Secretary of the Interior for the administration of such Act of Congress, as amended as of January 1, 1993. For these purposes the society may inspect the projects and examine the records of those projects eligible for grants and establish such rules and regulations relating thereto as may be necessary.

**Source:** Laws 1967, c. 596, § 1, p. 2032; Laws 1978, LB 628, § 1; Laws 1981, LB 407, § 1; Laws 1993, LB 682, § 1.

**82-119 Nebraska State Historical Society; powers and duties.**

The Nebraska State Historical Society shall be charged with the duty of marking and preserving the historical landmarks of Nebraska. It may hold property and be a party to suits and contracts.

**Source:** Laws 1957, c. 384, § 1, p. 1339; Laws 1959, c. 441, § 1, p. 1482; Laws 1961, c. 440, § 1, p. 1358; Laws 1965, c. 557, § 1, p. 1840; R.R.S.1943, § 82-201; Laws 1969, c. 811, § 1, p. 3048.

**82-120 Nebraska State Historical Society; selection of projects; procurement of markers; purchase, gift, or eminent domain; erection and maintenance.**

The Nebraska State Historical Society shall have authority to determine what historical events, personalities, sites, and traditions are of importance to the State of Nebraska and to justify the expenditure of public funds for the purchase of markers of uniform style, to be known as Highway Historical Markers; to procure such markers by expending any funds specifically approp-

riated by the Legislature for such purpose and to designate the approximate location of such markers; to preserve present markers; to accept gifts; and have power of eminent domain to be exercised as provided in sections 76-704 to 76-724. The Department of Roads shall erect and maintain such markers and shall determine the exact location of such markers, having due regard for the safety and welfare of the motoring public.

**Source:** Laws 1957, c. 384, § 2, p. 1340; Laws 1959, c. 441, § 3, p. 1483; R.R.S.1943, § 82-202; Laws 1969, c. 811, § 2, p. 3048.

**82-121 Nebraska State Historical Society; powers; delegation to subcommittees.**

The Nebraska State Historical Society shall have authority (1) to designate the approximate location of such markers, (2) to preserve present markers, (3) to accept gifts, and (4) to encourage local participation in and contribution to the erection of such markers through the use of gifts and matching-fund agreements. The society may appoint and delegate to a special committee the duty of research and investigation to assist in the determination of proper sites, events, personalities, and traditions to be designated.

**Source:** Laws 1957, c. 384, § 3, p. 1340; Laws 1959, c. 441, § 4, p. 1483; R.R.S.1943, § 82-203; Laws 1969, c. 811, § 3, p. 3049.

**82-122 Nebraska State Historical Society; markers damaged or destroyed; replacement.**

The Nebraska State Historical Society shall be empowered to use any legal means necessary to secure payment to the state for the actual replacement cost of any markers damaged or destroyed, accidentally or otherwise. Any fund so collected shall be placed in the treasury to the credit of the appropriate fund for the procurement of historical markers and may be expended as provided for by law.

**Source:** Laws 1957, c. 384, § 4, p. 1340; Laws 1959, c. 441, § 5, p. 1484; R.R.S.1943, § 82-204; Laws 1969, c. 811, § 4, p. 3049.

**82-123 Historical markers; erection or maintenance; written consent of society required.**

It shall be unlawful for any person, public or private corporation, association, or organization to post, erect, or maintain any historical marker, monument, sign or notice, on public property or any place in the state, upon any public street, road, or highway in the state bearing any legend, inscription, or notice which purports to record any historical event, incident, or fact or to maintain any such historical marker, monument, notice, or sign posted or erected after September 20, 1957, unless a written certificate of approval has first been secured from the Historical Land Mark Council or, after December 25, 1969, from the Nebraska State Historical Society.

**Source:** Laws 1957, c. 384, § 5, p. 1340; Laws 1959, c. 441, § 6, p. 1484; R.R.S.1943, § 82-205; Laws 1969, c. 811, § 5, p. 3049.

**82-124 Violations; penalty; malicious damage; recovery of replacement costs.**

Any person who shall violate any of the provisions of sections 82-119 to 82-124 shall be guilty of a Class V misdemeanor. Each day that a violation continues after notice shall constitute a separate offense. Where the markers are damaged maliciously, the court shall collect the replacement costs as part of the punishment.

**Source:** Laws 1957, c. 384, § 6, p. 1341; R.R.S.1943, § 82-206; Laws 1969, c. 811, § 6, p. 3049; Laws 1977, LB 39, § 307.

**82-125 Nebraska State Historical Society; property known as Neligh Mills; acquire title; cost; limitation; maintenance.**

The Nebraska State Historical Society is hereby authorized to acquire clear title in the name of the State of Nebraska, at a cost not to exceed five thousand dollars, of property known as the Neligh Mills and located in Antelope County. If the society is unable to acquire title to such property within one year after June 27, 1969, any money appropriated for such purpose shall revert to the General Fund, and any portion of such appropriation not required for the acquisition of such property shall revert to the General Fund. The society shall be responsible for the administration and continued maintenance of such property, if acquired, and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1969, c. 809, § 1, p. 3046.

**82-126 Nebraska State Historical Society; visitations to sites and monuments; restrict; signs; notices; violation; penalty.**

The Nebraska State Historical Society or any other society whose duty it is to preserve historical sites and monuments may restrict visitation at such hours and times as in its judgment would be a detriment to the site or monument. The society responsible for such site or monument may erect appropriate signs or notices restricting any visitation which might subject the site or monument to hazards and defacing. Any person violating the provisions of such signs or notices shall be guilty of a Class V misdemeanor.

**Source:** Laws 1971, LB 417, § 1; Laws 1977, LB 39, § 308.

**82-127 Historical Heritage Center; location; how designated; Nebraska State Historical Society; duties; powers.**

The Nebraska State Historical Society shall be responsible for the development of plans for the construction of a Historical Heritage Center on block 152 of the original plat of Lincoln, including lots 1 to 12, for the purpose of preserving, restoring, and interpreting the history of the people of Nebraska and the Central Great Plains. Such block is hereby designated as the Nebraska Historical Heritage Block. The society is hereby authorized to accept public and private funds for the purpose of constructing such building.

**Source:** Laws 1974, LB 704, § 1.

**82-128 Nebraska State Historical Society; acquire property of John G. Neihardt; erect structure; agreement; administration.**

The Nebraska State Historical Society is hereby authorized to acquire, without cost to the state, clear title in the name of the State of Nebraska to the real and personal property of the John G. Neihardt Foundation and to con-

struct on such real property a structure to be known as the John G. Neihardt Center. There is hereby appropriated to the Nebraska State Historical Society, Agency No. 54, the sum of two hundred thousand dollars for the purpose of constructing the John G. Neihardt Center. The Nebraska State Historical Society may enter into agreements with the John G. Neihardt Foundation for the operation of the John G. Neihardt Center but the society shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1974, LB 855, § 1.

**82-129 Nebraska State Historical Society; acquire property of Willa Cather Pioneer Memorial and Educational Foundation; Willa Cather Center; operation agreements.**

The Nebraska State Historical Society may acquire, without cost to the state, clear title in the name of the State of Nebraska to all the real and personal property of the Willa Cather Pioneer Memorial and Educational Foundation, except the foundation's trust account and investments which shall be retained by the foundation. The Nebraska State Historical Society may enter into agreements with the Willa Cather Pioneer Memorial and Educational Foundation for the operation of the Willa Cather Center but the society shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1978, LB 567, § 1.

**82-130 Willa Cather Pioneer Memorial and Educational Foundation; real property; legal description.**

The real property of the Willa Cather Pioneer Memorial and Educational Foundation authorized to be acquired pursuant to section 82-129 is more particularly described as follows:

(1) The Cather House described as lots 1, 2, and 3, block 24, original town of Red Cloud, Webster County, Nebraska;

(2) The Garber Bank described as lot 21, block 31, original town of Red Cloud, Webster County, Nebraska;

(3) The Grace Episcopal Church described as lots 19, 20, 21, 22, 23, and 24, block 6, original town, now the city of Red Cloud, Webster County, Nebraska;

(4) The St. Juliana Catholic Church described as lots 17, 18, 19, 20, 21, and 22, block 3, Railroad addition to the city of Red Cloud, Webster County, Nebraska;

(5) The Burlington Depot described as lots 10, 11, 12, and 13, block 19, Railroad addition to the city of Red Cloud, Webster County, Nebraska; and

(6) The Antonia Farmhouse described as follows: Commencing at the north-east corner of the southeast quarter of section 27, township 4 north, range 11 west of the sixth principal meridian, Webster County, Nebraska, thence south 895 feet; thence west 155 feet to the point of beginning; thence west a distance of 90 feet; thence south at a right angle a distance of 137 feet; thence east at a right angle a distance of 90 feet; thence north a distance of 137 feet to the point of beginning.

**Source:** Laws 1978, LB 567, § 2.

**82-131 George Norris House; designated.**

The George Norris home, located at 706 Norris Avenue in McCook, owned by the Nebraska State Historical Society, and legally described as all of lot 4, and the north half of lot 5, block 10, McCook first addition to the City of McCook, Red Willow County, Nebraska, is hereby designated as the George Norris House.

**Source:** Laws 1986, LB 563, § 4.

**82-132 George Norris House; Nebraska State Historical Society; powers and duties.**

The Nebraska State Historical Society shall be responsible for the administration and continued maintenance of the George Norris House and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1986, LB 563, § 5.

**82-133 Repealed. Laws 1993, LB 321, § 5.**

**82-134 Transferred to section 72-1802.**

**82-135 Repealed. Laws 1993, LB 321, § 5.**

**82-136 Transferred to section 72-1801.**

**ARTICLE 2**

**HISTORICAL LAND MARK COUNCIL**

Section

- 82-201. Transferred to section 82-119.
- 82-201.01. Repealed. Laws 1961, c. 440, § 2.
- 82-202. Transferred to section 82-120.
- 82-203. Transferred to section 82-121.
- 82-204. Transferred to section 82-122.
- 82-205. Transferred to section 82-123.
- 82-206. Transferred to section 82-124.

**82-201 Transferred to section 82-119.**

**82-201.01 Repealed. Laws 1961, c. 440, § 2.**

**82-202 Transferred to section 82-120.**

**82-203 Transferred to section 82-121.**

**82-204 Transferred to section 82-122.**

**82-205 Transferred to section 82-123.**

**82-206 Transferred to section 82-124.**

**ARTICLE 3**

**NEBRASKA ARTS COUNCIL**

Section

- 82-301. Repealed. Laws 1973, LB 121, § 8.
- 82-302. Repealed. Laws 1973, LB 121, § 8.

## Section

- 82-303. Repealed. Laws 1973, LB 121, § 8.
- 82-304. Repealed. Laws 1973, LB 121, § 8.
- 82-305. Repealed. Laws 1973, LB 121, § 8.
- 82-306. Repealed. Laws 1973, LB 121, § 8.
- 82-307. Repealed. Laws 1973, LB 121, § 8.
- 82-308. Repealed. Laws 1973, LB 121, § 8.
- 82-309. Nebraska Arts Council; created; members; appointment.
- 82-310. Nebraska Arts Council; members; term of office; chairperson; vice-chairperson; vacancies; compensation; expenses.
- 82-311. Chairman; officers, experts, employees; employ; compensation.
- 82-312. Nebraska Arts Council; duties.
- 82-313. Nebraska Arts Council; powers.
- 82-314. Nebraska Arts Council; federal funds; receive; disburse.
- 82-315. Nebraska Arts Council Trust Fund; created; use.
- 82-316. Nebraska Arts Council Cash Fund; created; deposits; disbursements.
- 82-317. Declaration of policy.
- 82-318. Terms, defined.
- 82-319. New state capital construction; appropriation; percentage used for works of art; when.
- 82-320. Nebraska Arts Council; duties.
- 82-321. Construction project committee; created; members; duties.
- 82-322. Nebraska Arts Council; promulgate rules and regulations.
- 82-323. Nebraska Arts Council; artists; how chosen.
- 82-324. Nebraska Arts Council; insure compliance with act; manner.
- 82-325. Expenditures for works of art; contracted separately.
- 82-326. Appropriation; works of art; administration, and installation; limitation.
- 82-327. Works of art; how displayed.
- 82-328. Works of art; property of State of Nebraska; sale of reproductions.
- 82-329. Works of art; Nebraska Arts Council; maintain inventory; inspect; recommend procedures.
- 82-330. Cultural preservation; legislative intent.
- 82-331. Nebraska Cultural Preservation Endowment Fund; created; use; investment.
- 82-332. Nebraska Arts and Humanities Cash Fund; created; use; investment.
- 82-333. Nebraska Arts and Humanities Cash Fund; report.

**82-301 Repealed. Laws 1973, LB 121, § 8.**

**82-302 Repealed. Laws 1973, LB 121, § 8.**

**82-303 Repealed. Laws 1973, LB 121, § 8.**

**82-304 Repealed. Laws 1973, LB 121, § 8.**

**82-305 Repealed. Laws 1973, LB 121, § 8.**

**82-306 Repealed. Laws 1973, LB 121, § 8.**

**82-307 Repealed. Laws 1973, LB 121, § 8.**

**82-308 Repealed. Laws 1973, LB 121, § 8.**

**82-309 Nebraska Arts Council; created; members; appointment.**

There is hereby created the Nebraska Arts Council to consist of fifteen members to be appointed by the Governor with the approval of the Legislature from among citizens of Nebraska who are known for their professional competence and experience in connection with the arts. In making such appointments, consideration shall be given to recommendations made by representa-

tive civic, educational, and professional associations and groups concerned with or engaged in the production or presentation of the arts generally.

**Source:** Laws 1973, LB 121, § 1.

**82-310 Nebraska Arts Council; members; term of office; chairperson; vice-chairperson; vacancies; compensation; expenses.**

The term of office of each member shall be three years with the terms of one-third of the members expiring every year. No member of the council who serves two consecutive three-year periods shall be eligible for reappointment during a one-year period following the expiration of his or her term. The Governor shall designate a chairperson and a vice-chairperson from the members of the council, to serve as such at the pleasure of the Governor. The chairperson shall be the chief executive officer of the council. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments are made. The members of the council shall not receive any compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1973, LB 121, § 2; Laws 1981, LB 204, § 200.

**82-311 Chairman; officers, experts, employees; employ; compensation.**

The chairman may, with the approval of the council, employ such officers, experts, and other employees as may be needed and shall fix their compensation within the amounts made available for such purposes.

**Source:** Laws 1973, LB 121, § 3.

**82-312 Nebraska Arts Council; duties.**

The duties of the council shall be:

(1) To stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein;

(2) To make such surveys as may be deemed advisable of public and private institutions within the state engaged in artistic and cultural activities, including, but not limited to, music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources; and

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts.

**Source:** Laws 1973, LB 121, § 4.

**82-313 Nebraska Arts Council; powers.**

The Nebraska Arts Council may (1) hold public and private hearings, (2) enter into contracts, within the limit of funds available therefor, with individuals, organizations, and institutions for services furthering the educational

objectives of the council's programs, (3) enter into contracts, within the limit of funds available therefor, with local and regional associations for cooperative endeavors furthering the educational objectives of the council's programs, (4) accept gifts, contributions, and bequests of unrestricted funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs, (5) distribute funds appropriated by the Legislature to any organization which has been designated as the state affiliate of the National Endowment for the Humanities for the period covered by the appropriation, (6) make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of sections 82-309 to 82-316, (7) enter into contracts, make and sign any agreements, and perform any acts that may be necessary to stabilize funding for the arts and humanities and to carry out the intent of sections 82-330 to 82-333, and (8) adopt and promulgate rules and regulations to carry out its powers and duties. The council may request from any department, division, board, bureau, commission, or agency of the state such assistance and data as will enable it properly to carry out its powers and duties.

**Source:** Laws 1973, LB 121, § 5; Laws 1993, LB 280, § 1; Laws 1998, LB 799, § 5.

**82-314 Nebraska Arts Council; federal funds; receive; disburse.**

The council shall be the official agency of this state to receive and disburse any funds made available by the federal government for programs related to the performing and fine arts.

**Source:** Laws 1973, LB 121, § 6.

**82-315 Nebraska Arts Council Trust Fund; created; use.**

All funds received by the Nebraska Arts Council under sections 82-313 and 82-314 shall be remitted to the State Treasurer for credit to the Nebraska Arts Council Trust Fund which is hereby created and which, when appropriated by the Legislature, shall be expended strictly in accord with any conditions that may be attached at the time of their receipt. This section does not apply to funds received by the council under sections 82-330 to 82-333.

**Source:** Laws 1973, LB 121, § 7; Laws 1998, LB 799, § 6.

**82-316 Nebraska Arts Council Cash Fund; created; deposits; disbursements.**

There is hereby created in the state treasury a special fund to be known as the Nebraska Arts Council Cash Fund. All sums of money received from fees from any conference, performance, or exhibition held by the council or by groups who have contracted with the council for such events shall be paid into the state treasury and the State Treasurer shall deposit the money in the Nebraska Arts Council Cash Fund. The State Treasurer shall disburse to the Nebraska Arts Council such amounts in the cash fund as are available and as shall be considered incident to the administration and sponsoring of any conference, performance, or exhibition by the Nebraska Arts Council or by groups who have contracted with the council for such events. All disbursements shall be made upon warrants drawn by the Director of Administrative Services.

**Source:** Laws 1977, LB 512, § 1.

**82-317 Declaration of policy.**

The Legislature recognizes the responsibility of the state to foster culture and the arts and its interest in the viable development of its artists. The Legislature declares it to be the policy of this state that a portion of all appropriations made after January 1, 1979, for capital expenditures be set aside for the acquisition of artworks to be used in public buildings.

**Source:** Laws 1978, LB 664, § 1.

**82-318 Terms, defined.**

As used in sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03, unless the context otherwise requires:

(1) Appropriation shall mean the amount of money set by the Legislature in excess of five hundred thousand dollars for new construction or in excess of two hundred fifty thousand dollars for remodeling for the particular project which is not limited by law, rule, or regulation less the amount of money spent for planning, land acquisition, and site work;

(2) Art shall mean the conscious use of skill, taste, and creative imagination in the production of aesthetic objects;

(3) Original construction shall mean the erection of a new building or facility and does not include remodeling if the cost is two hundred fifty thousand dollars or less or expansion of existing structures; and

(4) Public building shall mean buildings and facilities used by or open to the public as guests or business invitees and shall exclude repair shops, garages, warehouses, and buildings of a similar nature.

**Source:** Laws 1978, LB 664, § 2.

**82-319 New state capital construction; appropriation; percentage used for works of art; when.**

All boards, agencies, commissions, or departments of state government shall, after January 1, 1979, spend at least one percent of any appropriation for the original construction of any state building for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the board, agency, commission, or department in other public facilities.

**Source:** Laws 1978, LB 664, § 3.

**82-320 Nebraska Arts Council; duties.**

The Nebraska Arts Council shall determine the amount of money to be made available for the purchase of art for each project subject to section 82-319. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Nebraska Arts Council in consultation with the committee established pursuant to section 82-321.

**Source:** Laws 1978, LB 664, § 4.

**82-321 Construction project committee; created; members; duties.**

A committee shall be established for each construction project which comes under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

The committee shall consist of the architect, three members from the board, agency, commission, or department for which the building is being constructed, and three members of the Nebraska Arts Council or three members chosen by the council. The committee shall consult with the Nebraska Arts Council in carrying out the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

**Source:** Laws 1978, LB 664, § 5.

**82-322 Nebraska Arts Council; promulgate rules and regulations.**

The Nebraska Arts Council shall promulgate rules and regulations, as necessary, to carry out the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

**Source:** Laws 1978, LB 664, § 6.

**82-323 Nebraska Arts Council; artists; how chosen.**

The Nebraska Arts Council shall give a preference to regional artists in its selection of and commissioning of artists for projects under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

**Source:** Laws 1978, LB 664, § 7.

**82-324 Nebraska Arts Council; insure compliance with act; manner.**

The Nebraska Arts Council shall inform the Director of Administrative Services that sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 have been complied with for each project subject to section 82-319 before a warrant may be issued for payment.

**Source:** Laws 1978, LB 664, § 8.

**82-325 Expenditures for works of art; contracted separately.**

Expenditures for works of art shall be contracted for separately from all other items in the original construction of any public building.

**Source:** Laws 1978, LB 664, § 17.

**82-326 Appropriation; works of art; administration, and installation; limitation.**

The amount of money made available from any appropriations under the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall be used, in addition to the cost of the works of art, to provide for the administration by the contracting agency, the architect, and the Nebraska Arts Council, and for all costs of installation of the works of art.

**Source:** Laws 1978, LB 664, § 18.

**82-327 Works of art; how displayed.**

The works of art acquired pursuant to the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall be displayed in areas of the buildings open to the public.

**Source:** Laws 1978, LB 664, § 19.

**82-328 Works of art; property of State of Nebraska; sale of reproductions.**

All works of art acquired under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall become the property of the State of Nebraska. The artist shall retain no ownership, control, or authority of any kind over the work of art or its future disposition. In the event the state makes a net profit through the sale of reproductions of the work of art it may pay a portion of that profit to the artist.

**Source:** Laws 1978, LB 664, § 20.

**82-329 Works of art; Nebraska Arts Council; maintain inventory; inspect; recommend procedures.**

The Nebraska Arts Council shall maintain an inventory of all works of art purchased under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 and shall inspect each work of art at least once each calendar year to determine its condition. The Nebraska Arts Council may recommend procedures for regular maintenance, preservation, and security and for the repair of any damaged work of art.

**Source:** Laws 1978, LB 664, § 21.

**82-330 Cultural preservation; legislative intent.**

The Legislature finds that the cultural climate of Nebraska is important to the state in many ways, including economically, politically, educationally, and socially. Further, the Legislature finds that federal funding for the arts and humanities has decreased dramatically and that there is no assurance of continuation of federal funding. In order to ensure there is a stable cultural climate in our state for future generations, the Nebraska Arts Council and the Nebraska Humanities Council have joined efforts to establish a financial partnership between the public and private sectors.

**Source:** Laws 1998, LB 799, § 1.

**82-331 Nebraska Cultural Preservation Endowment Fund; created; use; investment.**

(1) There is hereby established in the state treasury a trust fund to be known as the Nebraska Cultural Preservation Endowment Fund. The fund shall consist of funds appropriated or transferred by the Legislature, and only the earnings of the fund may be used as provided in this section.

(2) On August 1, 1998, the State Treasurer shall transfer five million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund.

(3) It is the intent of the Legislature that the State Treasurer shall transfer two million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on August 1 of each of the following years: 2009 and 2010.

(4) On July 18, 2008, prior to the transfer of funds from any state account into the Nebraska Cultural Preservation Endowment Fund, the Nebraska Arts Council shall provide documentation to the budget division of the Department of Administrative Services that qualified endowments have generated a dollar-for-dollar match of new money as defined in section 82-332 that is equal to the amount of state funds authorized by the Legislature to be transferred to the Nebraska Cultural Preservation Endowment Fund. The budget division of the

Department of Administrative Services shall notify the State Treasurer to execute a transfer in an amount as specified by the Legislature only to the extent that the Nebraska Arts Council has provided documentation of a dollar-for-dollar match.

(5) The Legislature shall not appropriate or transfer money from the Nebraska Cultural Preservation Endowment Fund for any purpose other than the purposes stated in sections 82-330 to 82-333, except that the Legislature may appropriate or transfer money from the fund upon a finding that the purposes of such sections are not being accomplished by the fund.

(6) Any money in the Nebraska Cultural Preservation Endowment 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.

(7) All investment earnings from the Nebraska Cultural Preservation Endowment Fund shall be credited to the Nebraska Arts and Humanities Cash Fund.

**Source:** Laws 1998, LB 799, § 2; Laws 2008, LB1165, § 1.

Effective date July 18, 2008.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**82-332 Nebraska Arts and Humanities Cash Fund; created; use; investment.**

(1) The Nebraska Arts and Humanities Cash Fund is created. The fund shall consist of all funds credited from the Nebraska Cultural Preservation Endowment Fund pursuant to section 82-331. The Nebraska Arts Council shall administer and distribute the Nebraska Arts and Humanities Cash Fund. All disbursements from the Nebraska Arts and Humanities Cash Fund shall be matched dollar-for-dollar by sources other than state funds. The match funds shall be new money generated for endowments established by the Nebraska Arts Council or Nebraska Humanities Council or qualified endowments of their constituent organizations, new money generated as a result of seed grants to recipients, or new money generated by the Nebraska Arts Council or Nebraska Humanities Council for arts or humanities education. New money includes, but is not limited to, donations to the Nebraska Arts Council or Nebraska Humanities Council in anticipation of the establishment of the Nebraska Cultural Preservation Endowment Fund. New money used as a match shall not be limited to matching the Nebraska Arts and Humanities Cash Fund in the state fiscal year the new money is received, but it shall be used as a match no later than the subsequent fiscal year. For an endowment to be a qualified endowment (a) the endowment must meet the standards set by the Nebraska Arts Council or Nebraska Humanities Council, (b) the endowment must be intended for long-term stabilization of the organization, and (c) the funds of the endowment must be endowed and only the earnings thereon expended. An organization is a constituent organization if it receives funding from the Nebraska Arts Council or Nebraska Humanities Council and is tax exempt under section 501 of the Internal Revenue Code. The match funds required by this section shall not include in-kind contributions. The budget division of the Department of Administrative Services shall approve allotment and disbursement of funds from the Nebraska Arts and Humanities Cash Fund only to the extent the

Nebraska Arts Council has provided documentation of the dollar-for-dollar match required by this section. Funds from the Nebraska Arts and Humanities Cash Fund may be used for the purpose of obtaining challenge grants from the National Endowment for the Humanities or the National Endowment for the Arts.

(2) Rules and regulations of the Nebraska Arts Council shall provide that the ultimate use of disbursements from the Nebraska Arts and Humanities Cash Fund shall be in a ratio of seventy percent to projects, endowments, or programs designated by the Nebraska Arts Council and thirty percent to projects, endowments, or programs designated by the Nebraska Humanities Council.

(3) Any money in the 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.

**Source:** Laws 1998, LB 799, § 3.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**82-333 Nebraska Arts and Humanities Cash Fund; report.**

The Nebraska Arts Council shall report to the Clerk of the Legislature and Director of Administrative Services annually regarding disbursements from the Nebraska Arts and Humanities Cash Fund. The report shall include a complete listing of the uses of the fund, the sources of funding used to match state funds, the amount of investment earnings credited to the Nebraska Arts and Humanities Cash Fund, and the balance of the Nebraska Arts and Humanities Cash Fund. The report shall cover the period July 1 through June 30 and shall be submitted no later than November 1 of each year.

**Source:** Laws 1998, LB 799, § 4.

**ARTICLE 4**

**NEBRASKA ART COLLECTION ACT**

**Section**

- 82-401. Act, how cited.
- 82-402. Sections; purposes.
- 82-403. Terms, defined.
- 82-404. Nebraska Art Collection; program; how administered.
- 82-405. Nebraska Art Collection; composition.
- 82-406. Nebraska Art Collection; displayed; where; manner.
- 82-407. Acceptance of donations or loans; procedures.
- 82-408. Aid or grants; powers.

**82-401 Act, how cited.**

Sections 82-401 to 82-408 shall be known and may be cited as the Nebraska Art Collection Act.

**Source:** Laws 1979, LB 116, § 1.

**82-402 Sections; purposes.**

The purpose of sections 82-401 to 82-408 is to assist and encourage the artistic creations of Nebraska artists through the purchase and display of works

of art, to beautify public places by increasing the availability of works of art for exhibition, and to foster appreciation and understanding of art by making it more accessible to the public.

**Source:** Laws 1979, LB 116, § 2.

**82-403 Terms, defined.**

As used in sections 82-401 to 82-408, unless the context otherwise requires:

(1) Art shall mean the conscious use of skill, taste, and creative imagination in the production of aesthetic objects and may include sculpture, painting, photography, prints, tapestries, weavings, film, videotape, folk arts and crafts, graphic design, pottery, architectural sketches, and other items considered to be art; and

(2) Nebraska artists shall mean artists born in Nebraska, artists who have worked in or received a portion of their training in Nebraska, or artists living in Nebraska at the time of purchase of their works of art.

**Source:** Laws 1979, LB 116, § 3.

**82-404 Nebraska Art Collection; program; how administered.**

The Board of Regents of the University of Nebraska may establish a Nebraska Art Collection program at the University of Nebraska at Kearney. The Nebraska Art Collection shall be administered by the Board of Regents and the chief administrative officer of the University of Nebraska at Kearney. The Board of Regents shall designate a curator for the collection. The Board of Regents shall appoint any advisory committees it deems necessary to aid in the administration of the art collection.

**Source:** Laws 1979, LB 116, § 4; Laws 1989, LB 247, § 14.

**82-405 Nebraska Art Collection; composition.**

The collection shall be one that is representative of various mediums, styles, and periods of Nebraska artists and shall be representative of Nebraska's ethnic, racial minority, and cultural groups.

**Source:** Laws 1979, LB 116, § 5.

**82-406 Nebraska Art Collection; displayed; where; manner.**

Art collected under sections 82-401 to 82-408 may be displayed in museums, government buildings, schools, hospitals, libraries, public malls, community theaters, colleges and universities, state and county fairs, city halls, county courthouses, and other public places. It may be placed on temporary loan or displayed through traveling displays. Efforts should be made to display the art as widely throughout the state as possible in places where it is accessible to the public.

**Source:** Laws 1979, LB 116, § 6.

**82-407 Acceptance of donations or loans; procedures.**

The Board of Regents of the University of Nebraska and the chief administrative officer of the University of Nebraska at Kearney shall approve procedures

for the acceptance of donations or loans of art that meet the criteria of the Nebraska Art Collection Act.

**Source:** Laws 1979, LB 116, § 7; Laws 1989, LB 247, § 15.

**82-408 Aid or grants; powers.**

The Board of Regents of the University of Nebraska and the chief administrative officer of the University of Nebraska at Kearney, through the curator, may apply for and receive aid or grants from state sources, private foundations, local art organizations, or the federal government.

**Source:** Laws 1979, LB 116, § 8; Laws 1989, LB 247, § 16.

**ARTICLE 5**

**NEBRASKA ARCHAEOLOGICAL RESOURCES PRESERVATION ACT**

Section

- 82-501. Act, how cited.
- 82-502. Legislative findings and declarations.
- 82-503. Terms, defined.
- 82-504. State Archeology Office; created; powers; State Archaeologist; qualifications.
- 82-505. State or state-funded undertaking; notice required; exemption from act; act; how construed.
- 82-506. Funds, property, and services; acceptance and use.
- 82-507. Public land; prohibited acts; penalty; temporary restraining order or injunction.
- 82-508. Archaeological resource or archaeological site; prohibited acts; penalty.
- 82-509. Matching funds authorized.
- 82-510. State Archaeology Cash Fund; created; use; investment.

**82-501 Act, how cited.**

Sections 82-501 to 82-510 shall be known and may be cited as the Nebraska Archaeological Resources Preservation Act.

**Source:** Laws 2005, LB 211, § 1.

**82-502 Legislative findings and declarations.**

The Legislature hereby finds and declares that:

- (1) Archaeological sites represent an important public resource embodying the record of our state's cultural heritage;
- (2) The resource base of archaeological sites is being threatened at an increasing rate by agricultural, urban, commercial, transportation, governmental, and industrial development; and
- (3) The rights of private property owners must be maintained even when their property contains archaeological sites or resources.

**Source:** Laws 2005, LB 211, § 2.

**82-503 Terms, defined.**

For purposes of the Nebraska Archaeological Resources Preservation Act:

- (1) Archaeological resource means any material object of past human life or activities that is of archaeological interest. Such objects include, but are not limited to, pottery, basketry, bottles, weapons, tools, structures or portions of structures, dwellings, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of such items. Nonfossilized

and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources unless found in an archaeological context. No object shall be treated as an archaeological resource under this subdivision unless such object is determined to be at least fifty years of age;

(2) Archaeological site means a place or location where archaeological resources are found;

(3) Master archaeological site file means the records inventory of all known Nebraska archaeological sites maintained by the Nebraska State Historical Society;

(4) National Register of Historic Places means the register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior under the authority of the federal Historic Sites, Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);

(5) State agency means any division, department, board, bureau, commission, or agency of the State of Nebraska; and

(6) Undertaking means a project, activity, or program funded in whole or in part under the jurisdiction of a state agency.

**Source:** Laws 2005, LB 211, § 3.

**82-504 State Archeology Office; created; powers; State Archaeologist; qualifications.**

(1) There is hereby established the State Archaeology Office which shall be a division within the Nebraska State Historical Society. The purpose of the office shall be to coordinate and encourage appropriate archaeological undertakings and to preserve archaeological resources. The State Archaeology Office may adopt and promulgate rules and regulations to carry out the purposes of the Nebraska Archaeological Resources Preservation Act.

(2) The State Archaeology Office shall be headed by the State Archaeologist. The State Archaeologist shall be a graduate of a recognized college or university with a graduate degree in archaeology or anthropology and shall have sufficient practical experience and knowledge of archaeology to carry out the purposes of the act.

(3) The State Archaeology Office may:

(a) Promote development of archaeological resources for educational, cultural, tourism, and scientific purposes;

(b) Support popular and avocational interest in archaeological resources through field trips, demonstrations, seminars, and excavations throughout the state;

(c) Conduct a program of locating, identifying, quantifying, and assessing the significance of the state's archaeological resources;

(d) Maintain the master archaeological site file;

(e) Advise state agencies, political subdivisions, nongovernmental organizations, commercial and business interests, private property owners, individuals, and others as to the provisions and requirements of the act;

- (f) Serve as the liaison office in transactions dealing with archaeological resources between state agencies and between the state and the federal government;
- (g) Cooperate with state agencies and others in overseeing the execution of undertakings required by the act;
- (h) Serve as the liaison office between state agencies and Indian tribes, the Commission on Indian Affairs, or other constituent groups culturally affiliated with archaeological sites involved in undertakings;
- (i) Maintain a list of archaeologists qualified to conduct research projects required by the act;
- (j) Maintain a permanent repository and electronic data base of published and unpublished sources on the archaeological resources of the state;
- (k) Prepare, publish, and distribute for professional use and public education reports, bulletins, pamphlets, maps, and other products necessary to achieve the purposes of the act;
- (l) Implement a program of emergency salvage archaeology, which includes surveys and either salvage or preservation of archaeological resources imperiled by development activities or natural forces;
- (m) Administer and manage grants, bequests, devises, tax incentives, and easements of property to the state for the purposes of preserving archaeological sites and resources;
- (n) Ensure the long-term curation and management of collections and records resulting from undertakings within the state;
- (o) Identify properties included in the National Register of Historic Places that are endangered, and coordinate or facilitate the purchase and maintenance of such properties by other public or private agencies in order to preserve archeological sites or resources located on the properties; and
- (p) Conduct all other activities necessary to carry out the purposes of the act.

**Source:** Laws 2005, LB 211, § 4.

**82-505 State or state-funded undertaking; notice required; exemption from act; act; how construed.**

(1) Except as provided in subsection (2) of this section, the head of any state agency having jurisdiction over a proposed state or state-funded undertaking, which has potential to affect archaeological resources or sites, shall, prior to the approval of the expenditure of any state funds on the undertaking, notify the State Archaeology Office of the undertaking and cooperate with the office to identify and develop measures to mitigate the effect of the undertaking on any archaeological site or resource that is included in or eligible for inclusion in the National Register of Historic Places.

(2) The Department of Roads shall be exempt from the provisions of the Nebraska Archaeological Resources Preservation Act as long as a cooperative agreement exists between the Department of Roads and the Nebraska State Historical Society which ensures that all highway construction projects meet federal historic preservation legislation and regulations, and such federal preservation legislation and regulations fulfill or exceed the objectives and standards of the act.

(3) Nothing in the Nebraska Archaeological Resources Preservation Act shall be construed to abridge the rights of private property owners and in no case shall a private property owner be required to pay for activities undertaken by the State Archaeology Office.

**Source:** Laws 2005, LB 211, § 5.

**82-506 Funds, property, and services; acceptance and use.**

The State Archaeology Office may accept, use, disburse, and administer all funds or other property, services, and money allotted to it for purposes of the Nebraska Archaeological Resources Preservation Act and may prescribe the conditions under which such funds, property, services, or money will be accepted and administered.

**Source:** Laws 2005, LB 211, § 6.

**82-507 Public land; prohibited acts; penalty; temporary restraining order or injunction.**

(1) Any person who knowingly and willfully appropriates, excavates, injures, or destroys any archaeological resource on public land without written permission from the State Archaeology Office is guilty of a Class III misdemeanor.

(2) When the State Archaeology Office has cause to believe that a person has engaged in or is engaging in any unlawful conduct prescribed in this section, it may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Nebraska rules of civil procedure prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof.

**Source:** Laws 2005, LB 211, § 7.

**82-508 Archaeological resource or archaeological site; prohibited acts; penalty.**

No person shall enter or attempt to enter upon the lands of another without permission and intentionally appropriate, excavate, injure, or destroy any archaeological resource or any archaeological site. Any person committing such act is guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 211, § 8.

**82-509 Matching funds authorized.**

The Nebraska State Historical Society may use General Fund appropriations to match other funds, grants, or money received to carry out the Nebraska Archaeological Resources Preservation Act.

**Source:** Laws 2005, LB 211, § 9.

**82-510 State Archaeology Cash Fund; created; use; investment.**

The State Archaeology Cash Fund is hereby created. The fund may be used to carry out the purposes of the Nebraska Archaeological Resources Preservation Act. Any money in the 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.

**Source:** Laws 2005, LB 211, § 10.

**NEBRASKA ARCHAEOLOGICAL RESOURCES PRESERVATION ACT § 82-510**

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



STATE INSTITUTIONS

**CHAPTER 83**  
**STATE INSTITUTIONS**

Article.

1. Management.
  - (a) General Provisions. 83-101 to 83-123.01.
  - (b) Officers and Employees. 83-124 to 83-133.
  - (c) Property and Supplies. 83-134 to 83-156.
  - (d) Sale of Real Estate. 83-157, 83-158. Repealed.
  - (e) Alcoholism, Drug Abuse, and Addiction Services Act. 83-158.01 to 83-169. Transferred or Repealed.
  - (f) Correctional Services, Parole, and Pardons. 83-170 to 83-1,135.02.
  - (g) Division of Juvenile Delinquency. 83-1,136 to 83-1,140. Transferred.
  - (h) Mental Retardation. 83-1,141 to 83-1,146.
  - (i) Division of Medical Services. 83-1,147 to 83-1,152. Transferred or Repealed.
2. Schools.
  - (a) Vocational Rehabilitation. 83-201 to 83-216. Transferred or Repealed.
  - (b) Beatrice State Developmental Center. 83-217 to 83-238.
  - (c) Home for Children. 83-239 to 83-245. Transferred or Repealed.
  - (d) Mentally Retarded Children. 83-246, 83-247. Transferred.
3. Hospitals.
  - (a) Nebraska Orthopedic Hospital. 83-301 to 83-304.01. Repealed.
  - (b) State Hospitals for the Mentally Ill. 83-305 to 83-360.04.
  - (c) Nebraska Hospital for the Tuberculous. 83-361, 83-362. Repealed.
  - (d) Cost of Patient Care. 83-363 to 83-380.01.
  - (e) Residential Facilities. 83-381 to 83-390.
  - (f) Skilled Nursing Care and Intermediate Care. 83-391 to 83-393.
4. Penal and Correctional Institutions.
  - (a) General Provisions. 83-401 to 83-454.
  - (b) State Reformatory. 83-455 to 83-462. Repealed.
  - (c) Youth Rehabilitation and Treatment Centers. 83-463 to 83-490. Transferred or Repealed.
  - (d) Genoa State Farm. 83-491 to 83-493. Repealed.
  - (e) Central Reception Center. 83-494 to 83-499. Repealed.
  - (f) Youth Diagnostic and Rehabilitation Center. 83-4,100 to 83-4,104.01. Transferred or Repealed.
  - (g) Comprehensive Penal Reform Plan. 83-4,105 to 83-4,108. Repealed.
  - (h) Disciplinary Procedures in Adult Institutions. 83-4,109 to 83-4,123.
  - (i) Criminal Detention Minimum Standards. 83-4,124 to 83-4,134.
  - (j) Inmate Grievances. 83-4,135 to 83-4,139.
  - (k) Regimented Inmate Discipline Unit. 83-4,140, 83-4,141. Repealed.
  - (l) Incarceration Work Camps. 83-4,142 to 83-4,147.
  - (m) Substance Abuse Treatment Task Force. 83-4,148 to 83-4,152. Repealed.
  - (n) Nebraska Correctional Health Care Services Act. 83-4,153 to 83-4,165.
5. Sterilization of Inmates of Beatrice State Home. Repealed.
6. Eminent Domain by the State. Transferred or Repealed.
7. Drug Users. Repealed.
8. Interstate Compact on Mental Health. 83-801 to 83-806.
9. Department of Correctional Services.
  - (a) General Provisions. 83-901 to 83-924.01.
  - (b) Office of Juvenile Services. 83-925 to 83-930. Transferred or Repealed.
  - (c) Division of Community-Centered Services. 83-931 to 83-934.
  - (d) Division of Adult Services. 83-935 to 83-941.
  - (e) Division of Administrative Services. 83-942 to 83-944.
  - (f) Criminal Detention Facilities. 83-945 to 83-955.
  - (g) Transfer of Foreign Offenders. 83-956.

## STATE INSTITUTIONS

### Article.

- (h) Central Warehouse System. 83-957 to 83-959.
- (i) Correctional System Overcrowding Emergency Act. 83-960 to 83-963.
- 10. Mental Health Commitment and Release.
  - (a) Nebraska Mental Health Commitment Act. 83-1001 to 83-1078. Transferred or Repealed.
  - (b) Release Provisions. 83-1079 to 83-1081. Transferred or Repealed.
- 11. Persons with Mental Retardation. Repealed.
- 12. Developmental Disabilities Services. 83-1201 to 83-1227.

### Cross References

#### Constitutional provisions:

- Board of Pardons and Board of Parole, see Article IV, section 13, Constitution of Nebraska.
- Corporations under state control for charitable, educational, penal, or reformatory purposes may be created by special laws, see Article XII, section 1, Constitution of Nebraska.
- Required accounts and reports, see Article IV, sections 22 and 23, Constitution of Nebraska.
- Schools for reformation of children, Legislature may establish, see Article VII, section 12, Constitution of Nebraska.

#### Actions against state, service of summons, see section 25-21,203.

#### Electric current from University of Nebraska heating plant and Department of Correctional Services adult correctional facility power plant, contracts relating to, see sections 81-1108.27 and 81-1108.28.

#### Historical material in custody of, notice to Nebraska State Historical Society, see section 82-106.

#### Officers and employees:

- Basic workweek, see Chapter 84, article 10.
- Expense and mileage claims, see sections 81-1174 to 81-1177.
- Official bonds and oaths, see Chapter 11.

#### Rights-of-way across public lands for railroads and other utilities, see sections 31-354, 31-714, 46-153, 46-249, 70-301 to 70-313, and 86-701 to 86-710.

#### Rules of administrative agencies, see Chapter 84, article 9.

#### Session laws and journals, distribution to, see section 49-506.

#### State Building Fund, see section 72-1005.

#### State-owned motor vehicles, regulations and marking, see Chapter 81, article 10.

#### Statutes and supplements, distribution to, see sections 49-617 and 49-707.

#### Veterans' homes, see Chapter 80, article 3.

#### Wyuka Cemetery, Department of Health and Human Services, joint control of part of, see section 12-102.

## ARTICLE 1 MANAGEMENT

### Cross References

#### Care and treatment of children, use of other facilities, see section 83-108.04.

#### Department of Correctional Services-made goods, duties of Department of Health and Human Services, see section 83-144.

#### For other provisions relating to state agencies, see Chapter 81, article 1.

#### Jailhouse informer's testimony, restrictions on admissibility, see sections 29-1928 and 29-1929.

#### Persons on parole, probation, or work release, employment restrictions, see section 29-2262.01.

#### Purchase of surplus property from federal government authorized, see sections 81-907 to 81-909.

### (a) GENERAL PROVISIONS

#### Section

- 83-101. Repealed. Laws 1961, c. 416, § 32.
- 83-101.01. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.02. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.03. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.04. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.05. Repealed. Laws 1996, LB 1044, § 985.
- 83-101.06. Department of Health and Human Services; duties.
- 83-101.07. Repealed. Laws 1990, LB 1067, § 2.
- 83-101.08. Coordination of activities; duties.
- 83-101.09. Repealed. Laws 1993, LB 109, § 1.
- 83-101.10. Repealed. Laws 1987, LB 7, § 1.
- 83-101.11. Repealed. Laws 1987, LB 7, § 1.
- 83-101.12. Repealed. Laws 1987, LB 7, § 1.
- 83-101.13. Repealed. Laws 1987, LB 7, § 1.
- 83-101.14. Hearing-impaired persons; access to treatment programs; rules and regulations.
- 83-102. Repealed. Laws 1961, c. 416, § 32.
- 83-103. Repealed. Laws 1961, c. 416, § 32.

## MANAGEMENT

Section	
83-104.	Repealed. Laws 1961, c. 416, § 32.
83-104.01.	Repealed. Laws 1959, c. 266, § 1.
83-105.	Repealed. Laws 1961, c. 416, § 32.
83-106.	Repealed. Laws 1961, c. 416, § 32.
83-107.	Repealed. Laws 1961, c. 416, § 32.
83-107.01.	Department of Health and Human Services; official names of institutions under supervision.
83-107.02.	Repealed. Laws 1972, LB 1253, § 4.
83-107.03.	Repealed. Laws 1987, LB 8, § 1.
83-107.04.	Repealed. Laws 1987, LB 8, § 1.
83-108.	Department of Health and Human Services; institutions controlled.
83-108.01.	Repealed. Laws 1969, c. 817, § 87.
83-108.02.	Director of Correctional Services; establish facilities and programs; assignment of prisoners; basis.
83-108.03.	Repealed. Laws 1987, LB 8, § 1.
83-108.04.	Department of Health and Human Services; additional facilities for care of children.
83-109.	Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.
83-110.	Repealed. Laws 1981, LB 545, § 52.
83-111.	Department of Health and Human Services; estimated appropriation; suggested improvements.
83-112.	Department of Health and Human Services; collection of information; encouragement of scientific study; investigations.
83-113.	Department of Health and Human Services; examination of employees; investigation of alleged abuses; report.
83-114.	Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt.
83-115.	Department of Health and Human Services; investigation; legislative committee; powers of committee.
83-116.	Department of Health and Human Services; actions at law.
83-117.	Repealed. Laws 1961, c. 416, § 32.
83-118.	Repealed. Laws 1961, c. 416, § 32.
83-119.	Repealed. Laws 1961, c. 416, § 32.
83-120.	Repealed. Laws 2000, LB 1115, § 93.
83-121.	School District Reimbursement Fund; created; use; investment.
83-122.	Repealed. Laws 1971, LB 376, § 7.
83-123.	Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.
83-123.01.	Repealed. Laws 1993, LB 31, § 83.
	(b) OFFICERS AND EMPLOYEES
83-124.	Transferred to section 80-325.
83-125.	Repealed. Laws 2007, LB 296, § 815.
83-126.	Facilities; chief executive officer; appointment.
83-127.	Repealed. Laws 1965, c. 538, § 40.
83-128.	Officers and employees; bond or insurance.
83-129.	Repealed. Laws 1996, LB 1044, § 985.
83-129.01.	Repealed. Laws 1999, LB 13, § 1.
83-130.	Emergency Revolving Fund; amount; source; accounting.
83-131.	Repealed. Laws 1969, c. 817, § 87.
83-132.	Repealed. Laws 1961, c. 416, § 32.
83-133.	Chief executive officers; excess funds belonging to inmates; investment; use and distribution of income.
	(c) PROPERTY AND SUPPLIES
83-134.	Repealed. Laws 2007, LB 256, § 17.
83-135.	Grounds; abutting streets; paving; procedure.
83-136.	Paving petitions; power to sign.
83-137.	State institutions; adjacent highways; improvement.
83-138.	Repealed. Laws 1963, c. 508, § 15.

## STATE INSTITUTIONS

- Section  
83-139. Stewards; duties; reports; shortages; default; penalty.  
83-140. Supplies for Department of Health and Human Services and Department of Correctional Services; purchase; monthly statement; estimates.  
83-141. Repealed. Laws 1957, c. 368, § 7.  
83-142. Repealed. Laws 1969, c. 818, § 24.  
83-143. Paupers; inmates of public charitable institutions; clothing; county of last residence to furnish.  
83-144. Department of Correctional Services-made goods; Department of Health and Human Services and Department of Correctional Services; administrative powers.  
83-145. Department of Correctional Services-made goods; use; by whom; exchange of goods with other states; sales authorized.  
83-145.01. Department of Correctional Services; sale and production of braille materials; authorized.  
83-146. Purchases; Department of Administrative Services; requisition.  
83-147. Director of Administrative Services; Department of Correctional Services-made goods; discretionary powers.  
83-148. Unauthorized vouchers; issuance; effect; malfeasance in office; punishment.  
83-149. Department of Correctional Services-made goods; catalog; estimates of materials required.  
83-150. Correctional Industries Revolving Fund; created; use; investment.  
83-151. Department of Correctional Services-made goods; transportation and sale.  
83-152. Goods made by confined persons; reciprocity.  
83-153. Money or personal property to credit of inmate or patient; claim; time for presentment.  
83-154. Money to credit of inmate or patient; claim; failure to assert; disposition.  
83-155. Personal property to credit of inmate or patient; claim; failure to assert; sale; disposition of money.  
83-156. Money or personal property to credit of inmate or patient; delivery to owner or heirs not prohibited.

### (d) SALE OF REAL ESTATE

- 83-157. Repealed. Laws 1971, LB 33, § 1.  
83-158. Repealed. Laws 1971, LB 33, § 1.

### (e) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES ACT

- 83-158.01. Repealed. Laws 2004, LB 1083, § 149.  
83-159. Repealed. Laws 2004, LB 1083, § 149.  
83-160. Repealed. Laws 2004, LB 1083, § 149.  
83-160.01. Repealed. Laws 1987, LB 9, § 1.  
83-161. Repealed. Laws 1980, LB 684, § 22.  
83-161.01. Repealed. Laws 1986, LB 674, § 9.  
83-161.02. Repealed. Laws 2004, LB 1083, § 149.  
83-162. Repealed. Laws 1980, LB 684, § 22.  
83-162.01. Repealed. Laws 2004, LB 1083, § 149.  
83-162.02. Repealed. Laws 2004, LB 1083, § 149.  
83-162.03. Repealed. Laws 2004, LB 1083, § 149.  
83-162.04. Transferred to section 71-817.  
83-162.05. Repealed. Laws 1997, LB 307, § 236.  
83-162.06. Repealed. Laws 2001, LB 541, § 12.  
83-163. Repealed. Laws 2004, LB 1083, § 149.  
83-164. Repealed. Laws 2004, LB 1083, § 149.  
83-165. Repealed. Laws 2004, LB 1083, § 149.  
83-166. Repealed. Laws 2004, LB 1083, § 149.  
83-167. Repealed. Laws 2004, LB 1083, § 149.  
83-168. Repealed. Laws 2004, LB 1083, § 149.  
83-169. Repealed. Laws 2004, LB 1083, § 149.

## MANAGEMENT

Section	
	(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS
83-170.	Terms, defined.
83-171.	Department of Correctional Services; created; duties.
83-172.	Director of Correctional Services; appointment; salary; qualifications.
83-173.	Director of Correctional Services; duties.
83-173.01.	Director of Correctional Services; release of certain convicts; duties.
83-174.	Registered sex offender; release or termination of supervision; notice required; county attorney; duties.
83-174.01.	Dangerous sex offender; terms, defined.
83-174.02.	Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice.
83-174.03.	Certain sex offenders; supervision by Office of Parole Administration; notice prior to release; risk assessment and evaluation; conditions of community supervision.
83-174.04.	Violation of condition of community supervision; actions authorized.
83-174.05.	Violation of conditions of community supervision; penalty.
83-175.	Committed person; treatment; duties.
83-176.	Director of Correctional Services; designate place of confinement.
83-177.	Facility; chief executive officer; designation.
83-178.	Director; records; contents; confidential; classification and treatment of persons committed.
83-179.	Person committed; physical examination; evaluation; contents; recommendations.
83-180.	Physician or psychologist; designation; duties; transfer of person committed; jurisdiction; release; conditions.
83-181.	Person committed; health care; food and clothing.
83-182.	Director; establish programs.
83-182.01.	Structured programming.
83-183.	Persons committed; employment; wages; use; rules and regulations.
83-183.01.	Persons committed; wages; disposition; director; adopt rules and regulations.
83-184.	Person committed; visit outside facility; work at paid employment; funds; disposal; violations; effect.
83-185.	Transferred to section 83-4,114.01.
83-186.	Visitors of facilities; enumerated.
83-187.	Release of person committed; procedures.
83-187.01.	Legislative intent.
83-188.	Board of Parole; created; act, how construed.
83-189.	Board of Parole; members; appointment; qualifications; chairperson; duties.
83-190.	Board of Parole; members; terms; removal; procedure.
83-191.	Board of Parole; members; restriction on activities; salary.
83-192.	Board of Parole; chairperson; powers; duties.
83-193.	Board of Parole; no jurisdiction over person neglected, dependent, delinquent, or in need of special supervision.
83-194.	Board of Parole; advise Board of Pardons upon request.
83-195.	Board of Parole; issue process; service; compel attendance of witnesses; fees.
83-196.	Board of Parole; quorum; decisions; record.
83-197.	Department of Correctional Services; records to be kept.
83-198.	Prohibited acts; violation; penalty.
83-199.	Board of Parole; provision of law not applicable.
83-1,100.	Office of Parole Administration; created; duties.
83-1,100.01.	Transfer of property to Board of Pardons and Board of Parole.
83-1,101.	Parole Administrator; appointment; qualifications.
83-1,102.	Parole Administrator; duties.
83-1,103.	Field parole service; duties.
83-1,103.01.	Lifetime community supervision; parole officer; duties.
83-1,103.02.	Lifetime community supervision; Office of Parole Administration; duties; certificate of community supervision; appeal.

## STATE INSTITUTIONS

- Section
- 83-1,103.03. Lifetime community supervision; Office of Parole Administration; annual review.
- 83-1,103.04. Lifetime community supervision; determination or revision of conditions; appeal; burden of proof.
- 83-1,104. District parole officer; duties.
- 83-1,105. Repealed. Laws 1993, LB 529, § 2.
- 83-1,105.01. Indeterminate sentence; court; duties; study of offender; when; costs.
- 83-1,106. Maximum term; credit; how obtained.
- 83-1,107. Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration.
- 83-1,107.01. Fees; waiver; when; failure to pay; effect.
- 83-1,107.02. Parole Program Cash Fund; created; use; investment.
- 83-1,108. Board of Parole; reduction of sentence for good conduct; provisions; forfeiture.
- 83-1,109. Chief executive officer; good time; report; Director of Correctional Services; duties.
- 83-1,110. Committed offender; eligible for release on parole; when.
- 83-1,110.01. Substance abuse therapy; department; duties; waiver of requirement by board; when.
- 83-1,110.02. Medical parole; eligibility; conditions; term.
- 83-1,110.03. Medical parole; revocation; effect.
- 83-1,111. Committed offender; release on parole; review procedures; release date set; case deferred; reconsideration.
- 83-1,112. Committed offender; eligible for parole; parole plan of offender.
- 83-1,113. Board of Parole and employees; access to offender; reports on conduct and character.
- 83-1,114. Board of Parole; deferment of parole; grounds.
- 83-1,115. Board of Parole; determination regarding committed offender's parole; factors considered.
- 83-1,116. Committed offender; release on parole; conditions of parole.
- 83-1,117. Parolee; conditions of parole.
- 83-1,118. Board of Parole; parolee; discharge from parole; when; Department of Correctional Services; discharge from custody; notice of civil rights.
- 83-1,119. Parolee; violation of parole; parole officer; report to Board of Parole; action of board.
- 83-1,120. Parolee; violation of parole; hearing.
- 83-1,121. Parolee; legal custody of Board of Parole; action of board.
- 83-1,122. Parolee; violation of parole; action of Board of Parole.
- 83-1,123. Parole; revoked; action of Board of Parole.
- 83-1,124. Parolee; unauthorized leaving of state; penalty; where tried; cost of return; paid by state.
- 83-1,125. Warrant or detainer; administrator; board; duties.
- 83-1,126. Board of Pardons; created; members; secretary.
- 83-1,126.01. Persons subject to act.
- 83-1,127. Board of Pardons; duties.
- 83-1,127.01. Department of Correctional Services; provide services to Board of Pardons and Board of Parole.
- 83-1,127.02. Board of Pardons; ignition interlock permit; ignition interlock device restriction; violation; penalty.
- 83-1,128. Board of Pardons; issue process; service; compel attendance of witnesses; fees.
- 83-1,129. Board of Pardons; pardon authority; application; consideration.
- 83-1,130. Board of Pardons; pardon authority; application; limitation; relief granted or denied.
- 83-1,131. Offender; granted a reprieve; commit to Department of Correctional Services.
- 83-1,132. Committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix.
- 83-1,133. Prohibited acts; threat of harm to member of Board of Pardons; penalty.
- 83-1,134. Administrative procedure provisions; not applicable.
- 83-1,135. Act, how cited.

## Section

- 83-1,135.01. Transferred to section 83-1,110.01.  
 83-1,135.02. Changes under Laws 2003, LB 46; legislative intent.

## (g) DIVISION OF JUVENILE DELINQUENCY

- 83-1,136. Transferred to section 83-925.  
 83-1,137. Transferred to section 83-927.  
 83-1,138. Transferred to section 83-928.  
 83-1,139. Transferred to section 83-929.  
 83-1,140. Transferred to section 83-930.

## (h) MENTAL RETARDATION

- 83-1,141. Repealed. Laws 1991, LB 830, § 36.  
 83-1,142. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143.01. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143.02. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143.03. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143.04. Repealed. Laws 1991, LB 703, § 81; Laws 1991, LB 830, § 36.  
 83-1,143.05. Repealed. Laws 1991, LB 830, § 36.  
 83-1,143.06. Developmental disability regions; enumerated.  
 83-1,143.07. Repealed. Laws 1991, LB 830, § 36.  
 83-1,144. Repealed. Laws 1991, LB 830, § 36.  
 83-1,144.01. Repealed. Laws 1991, LB 830, § 36.  
 83-1,145. Repealed. Laws 1973, LB 311, § 10.  
 83-1,146. Repealed. Laws 1991, LB 830, § 36.

## (i) DIVISION OF MEDICAL SERVICES

- 83-1,147. Transferred to section 83-101.06.  
 83-1,148. Transferred to section 83-125.  
 83-1,149. Repealed. Laws 1996, LB 1155, § 121.  
 83-1,150. Repealed. Laws 1996, LB 1155, § 121.  
 83-1,151. Repealed. Laws 1996, LB 1155, § 121.  
 83-1,152. Repealed. Laws 1996, LB 1155, § 121.

## (a) GENERAL PROVISIONS

**83-101 Repealed. Laws 1961, c. 416, § 32.**

**83-101.01 Repealed. Laws 1996, LB 1044, § 985.**

**83-101.02 Repealed. Laws 1996, LB 1044, § 985.**

**83-101.03 Repealed. Laws 1996, LB 1044, § 985.**

**83-101.04 Repealed. Laws 1996, LB 1044, § 985.**

**83-101.05 Repealed. Laws 1996, LB 1044, § 985.**

**83-101.06 Department of Health and Human Services; duties.**

The Department of Health and Human Services shall:

(1) Administer the clinical programs and services of the Beatrice State Developmental Center, the Lincoln Regional Center, the Norfolk Regional Center, the Hastings Regional Center, and such other medical facilities, including skilled nursing care and intermediate care facilities, as may be provided by the department;

(2) Plan, develop, administer, and operate mental health and mental retardation clinics, programs, and services;

(3) Plan, develop, and execute the clinical programs and services carried on by the department; and

(4) Represent the department in its work with the University of Nebraska Medical Center concerning psychiatric services.

**Source:** Laws 1969, c. 818, § 1, p. 3114; Laws 1973, LB 536, § 3; Laws 1987, LB 112, § 1; Laws 1996, LB 1044, § 925; R.S.1943, (1994), § 83-1,147; Laws 1996, LB 1155, § 80.

**83-101.07 Repealed. Laws 1990, LB 1067, § 2.**

**83-101.08 Coordination of activities; duties.**

The Department of Health and Human Services shall consult and cooperate with the Department of Correctional Services so as to coordinate in an effective manner the activities of the departments with those related activities affecting the welfare of persons which are the responsibility of the Department of Health and Human Services and the Department of Correctional Services.

**Source:** Laws 1961, c. 416, § 7, p. 1266; Laws 1973, LB 563, § 18; Laws 1996, LB 1044, § 894; Laws 2007, LB296, § 778.

**83-101.09 Repealed. Laws 1993, LB 109, § 1.**

**83-101.10 Repealed. Laws 1987, LB 7, § 1.**

**83-101.11 Repealed. Laws 1987, LB 7, § 1.**

**83-101.12 Repealed. Laws 1987, LB 7, § 1.**

**83-101.13 Repealed. Laws 1987, LB 7, § 1.**

**83-101.14 Hearing-impaired persons; access to treatment programs; rules and regulations.**

The Department of Health and Human Services with the assistance of the Commission for the Deaf and Hard of Hearing shall adopt and promulgate rules and regulations to define criteria and standards for access by eligible hearing-impaired persons to mental health, alcoholism, and drug abuse treatment programs.

**Source:** Laws 1995, LB 25, § 9; Laws 1996, LB 1044, § 895; Laws 1997, LB 851, § 26.

**83-102 Repealed. Laws 1961, c. 416, § 32.**

**83-103 Repealed. Laws 1961, c. 416, § 32.**

**83-104 Repealed. Laws 1961, c. 416, § 32.**

**83-104.01 Repealed. Laws 1959, c. 266, § 1.**

**83-105 Repealed. Laws 1961, c. 416, § 32.**

**83-106 Repealed. Laws 1961, c. 416, § 32.**

**83-107 Repealed. Laws 1961, c. 416, § 32.****83-107.01 Department of Health and Human Services; official names of institutions under supervision.**

The official names of the state institutions under the supervision of the Department of Health and Human Services shall be as follows: (1) Beatrice State Developmental Center, (2) Lincoln Regional Center, (3) Norfolk Regional Center, (4) Hastings Regional Center, (5) Grand Island Veterans' Home, (6) Norfolk Veterans' Home, (7) Western Nebraska Veterans' Home, (8) Youth Rehabilitation and Treatment Center-Kearney, (9) Youth Rehabilitation and Treatment Center-Geneva, and (10) the Thomas Fitzgerald Veterans' Home prior to July 1, 2007, and, on and after July 1, 2007, the Eastern Nebraska Veterans' Home.

**Source:** Laws 1945, c. 250, § 1, p. 786; Laws 1949, c. 291, § 1, p. 994; Laws 1951, c. 318, § 1, p. 1086; Laws 1955, c. 341, § 2, p. 1055; Laws 1959, c. 418, § 9, p. 1403; Laws 1959, c. 419, § 10, p. 1412; Laws 1961, c. 416, § 12, p. 1269; Laws 1963, c. 528, § 2, p. 1656; Laws 1969, c. 814, § 6, p. 3061; Laws 1969, c. 818, § 7, p. 3117; Laws 1972, LB 1253, § 1; Laws 1973, LB 563, § 19; Laws 1975, LB 466, § 1; Laws 1976, LB 974, § 1; Laws 1996, LB 1044, § 896; Laws 1997, LB 396, § 22; Laws 1998, LB 1073, § 167; Laws 2006, LB 994, § 146; Laws 2007, LB296, § 779.

**Cross References**

For provisions relating to the Beatrice State Developmental Center, see sections 83-217 to 83-227.02.

For provisions relating to the Nebraska veterans' homes, see section 80-314 et seq.

For provisions relating to the state hospitals for the mentally ill, see sections 83-305 to 83-357.

**83-107.02 Repealed. Laws 1972, LB 1253, § 4.****83-107.03 Repealed. Laws 1987, LB 8, § 1.****83-107.04 Repealed. Laws 1987, LB 8, § 1.****83-108 Department of Health and Human Services; institutions controlled.**

The Department of Health and Human Services shall have oversight and general control of the Beatrice State Developmental Center, the Nebraska veterans homes, the hospitals for the mentally ill, such skilled nursing care and intermediate care facilities as may be established by the department, facilities and programs operated by the Office of Juvenile Services, and all charitable institutions.

**Source:** Laws 1913, c. 179, § 9, p. 537; R.S.1913, § 7187; C.S.1922, § 6838; C.S.1929, § 83-109; Laws 1935, c. 185, § 1, p. 685; C.S.Supp.,1941, § 83-109; R.S.1943, § 83-108; Laws 1949, c. 291, § 2, p. 994; Laws 1959, c. 442, § 1, p. 1485; Laws 1959, c. 418, § 13, p. 1405; Laws 1959, c. 419, § 11, p. 1412; Laws 1961, c. 416, § 14, p. 1270; Laws 1963, c. 526, § 3, p. 1649; Laws 1963, c. 528, § 3, p. 1656; Laws 1969, c. 814, § 7, p. 3061; Laws 1973, LB 563, § 20; Laws 1973, LB 536, § 2; Laws 1996, LB 1044, § 897; Laws 1997, LB 396, § 23.

The statutes which give the Court of Industrial Relations American Fed. of S., C. & M. Emp. v. Department of Public jurisdiction over public employees are not unconstitutional. Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

**83-108.01 Repealed. Laws 1969, c. 817, § 87.****83-108.02 Director of Correctional Services; establish facilities and programs; assignment of prisoners; basis.**

The Director of Correctional Services shall establish facilities and programs for persons committed to the Department of Correctional Services. The assignment to such programs shall be based on the evaluation and recommendation from the Diagnostic and Evaluation Center. The director shall not classify prisoners committed to the department into separate dwelling units solely on the basis of race; except that any prisoner may be isolated for insubordination, security, or rehabilitation.

**Source:** Laws 1963, c. 528, § 6, p. 1657; Laws 1967, c. 601, § 1, p. 2043; Laws 1980, LB 794, § 1.

**83-108.03 Repealed. Laws 1987, LB 8, § 1.****83-108.04 Department of Health and Human Services; additional facilities for care of children.**

(1) In addition to the institutions established by law, the Department of Health and Human Services may maintain or use the following facilities for the care of children in its legal custody who have been adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247: (a) Receiving homes to be used for the temporary care of children; (b) foster homes; (c) group homes; and (d) other facilities and services, including forestry or conservation camps for the training and treatment of children.

(2) The Department of Health and Human Services also may use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody. Placement of children in private or public facilities not under its jurisdiction shall not terminate the legal custody of the department. No state funds may be paid for care of a child in the home of a parent.

**Source:** Laws 1967, c. 249, § 1, p. 659; Laws 1973, LB 563, § 21; Laws 1988, LB 790, § 33; Laws 1996, LB 1044, § 898.

**83-109 Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.**

The Department of Health and Human Services shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her. A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death, such records to be accessible only (1) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, (2) upon order of a judge or court, (3) in accordance with sections 20-161 to 20-166, (4) to the Nebraska State Patrol pursuant to section 69-2409.01, or (5) to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification

tion requirements pursuant to subsections (4) and (5) of section 81-1850. In addition, a patient or resident or his or her legally authorized representative may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent. Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers. When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept and the patient accepted at the earliest practicable date. The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act. The department shall have full authority on its own suggestion or upon the application of any interested person to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department considers such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

**Source:** Laws 1913, c. 179, § 27, p. 546; R.S.1913, § 7205; C.S.1922, § 6856; C.S.1929, § 83-127; R.S.1943, § 83-109; Laws 1961, c. 416, § 15, p. 1270; Laws 1963, c. 525, § 1, p. 1645; Laws 1971, LB 419, § 1; Laws 1975, LB 206, § 1; Laws 1979, LB 322, § 61; Laws 1981, LB 545, § 39; Laws 1985, LB 315, § 1; Laws 1988, LB 697, § 7; Laws 1988, LB 352, § 182; Laws 1996, LB 1044, § 899; Laws 1996, LB 1055, § 16; Laws 1997, LB 325, § 2.

Cross References

**Administrative Procedure Act**, see section 84-920.

**Burial of dead inmates**, portion of Wyuka Cemetery reserved for, see section 12-102.

**83-110 Repealed. Laws 1981, LB 545, § 52.**

**83-111 Department of Health and Human Services; estimated appropriation; suggested improvements.**

The Department of Health and Human Services shall prepare an estimate of the appropriations necessary for the support and needed improvements of the institutions under its charge, and a report of their operation during the preceding biennium, for the use of the Legislature. The estimate shall be printed and may include a report of the results of investigation of methods of institution management and of treatment of patients and inmates, with suggestions for the betterment of any or all conditions.

**Source:** Laws 1913, c. 179, § 17, p. 541; R.S.1913, § 7195; C.S.1922, § 6846; C.S.1929, § 83-117; R.S.1943, § 83-111; Laws 1996, LB 1044, § 900.

**83-112 Department of Health and Human Services; collection of information; encouragement of scientific study; investigations.**

(1) The Department of Health and Human Services shall gather information as to the expenditures of charitable institutions in this and other countries and regarding the best and most successful methods of caring for persons with mental retardation and persons with a mental disorder.

(2) The Department of Health and Human Services shall encourage scientific investigation of the treatment of mental problems, epilepsy, and all other diseases and causes that contribute to mental disabilities by the medical staffs of the state medical institutions. The department shall provide forms for statistical returns to be made by the institutions. The department shall make an investigation of the conditions, causes, prevention, and cure of epilepsy, mental retardation, and mental disorders. The department shall give special attention to the methods of care, treatment, education, and improvement of the persons served by the institutions under its control and shall exercise a careful supervision of the methods to the end that, so far as practicable, the best treatment and care known to modern science shall be given to such persons and that the best methods of teaching, improving, and educating such persons shall be used.

**Source:** Laws 1913, c. 179, § 28, p. 547; R.S.1913, § 7206; C.S.1922, § 6857; C.S.1929, § 83-128; R.S.1943, § 83-112; Laws 1955, c. 231, § 22, p. 728; Laws 1973, LB 563, § 22; Laws 1979, LB 322, § 62; Laws 1981, LB 545, § 40; Laws 1986, LB 1177, § 39; Laws 1996, LB 1044, § 901.

**83-113 Department of Health and Human Services; examination of employees; investigation of alleged abuses; report.**

The Department of Health and Human Services may examine any of the officers, attendants, guards, and other employees and make such inquiries as will determine their fitness for their respective duties and shall investigate and report to the Governor any abuses or wrongs alleged to exist in the institution.

**Source:** Laws 1913, c. 179, § 18, p. 542; R.S.1913, § 7196; C.S.1922, § 6847; C.S.1929, § 83-118; R.S.1943, § 83-113; Laws 1961, c. 416, § 16, p. 1271; Laws 1996, LB 1044, § 902; Laws 2007, LB296, § 780.

**83-114 Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt.**

The Department of Health and Human Services shall have the power to summon and examine witnesses under oath, to examine books and papers pertaining to the subject under investigation, and to compel the production of such books and papers. Witnesses who are not employees of the state shall receive the same fees as witnesses in civil cases in the district court, and their fees shall be paid by vouchers. Any officer or employee who interferes in any manner with the department's official investigation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be removed from his or her position, and be fined in a sum not less than ten dollars nor more than one hundred dollars. The claim that any testimony or evidence sought to be elicited or produced may tend to incriminate the person giving or producing it, or expose him or her to public ignominy, shall not excuse him or her from testifying or producing the evidence, but any evidence given by a witness at such an investigation shall not be used against him or her in a criminal prosecution. A witness shall not be exempt from prosecution and punishment

for perjury for testifying falsely at an investigation. It shall be the duty of the department to cause such testimony to be filed in the office of the department as soon thereafter as practicable, and such testimony shall be open for inspection. Any person failing to obey the orders of the department, issued under the provisions of this section, shall be reported by the department to the district court, or any judge thereof, and shall be dealt with by the court or judge as for contempt of court.

**Source:** Laws 1913, c. 179, § 19, p. 542; R.S.1913, § 7197; C.S.1922, § 6848; C.S.1929, § 83-119; R.S.1943, § 83-114; Laws 1961, c. 416, § 17, p. 1271; Laws 1996, LB 1044, § 903; Laws 2007, LB296, § 781.

**Cross References**

For witness fees in district court, see section 33-139.

**83-115 Department of Health and Human Services; investigation; legislative committee; powers of committee.**

The Department of Health and Human Services shall be prepared to give any information desired by the Legislature concerning the institutions under its control, and its administration shall be subject to examination under oath by a legislative committee, touching any matter in regard to which the Legislature may desire information concerning the condition of the institutions, their inmates, and the performance of their duties by the department. The committee may call and examine under oath any other persons as witnesses in such investigation. Such examinations shall be conducted in the manner and subject to the provisions of section 83-114.

**Source:** Laws 1913, c. 179, § 20, p. 543; R.S.1913, § 7198; C.S.1922, § 6849; C.S.1929, § 83-120; R.S.1943, § 83-115; Laws 1961, c. 416, § 18, p. 1272; Laws 1996, LB 1044, § 904; Laws 2007, LB296, § 782.

**83-116 Department of Health and Human Services; actions at law.**

The Department of Health and Human Services shall have the power to bring all suits necessary to protect the interests of the state. Such proceedings shall be instituted in the name of the State of Nebraska.

**Source:** Laws 1913, c. 179, § 26, p. 546; R.S.1913, § 7204; C.S.1922, § 6855; C.S.1929, § 83-126; R.S.1943, § 83-116; Laws 1996, LB 1044, § 905.

**Cross References**

Service of summons in actions against state, see section 25-21,203.

**83-117 Repealed. Laws 1961, c. 416, § 32.**

**83-118 Repealed. Laws 1961, c. 416, § 32.**

**83-119 Repealed. Laws 1961, c. 416, § 32.**

**83-120 Repealed. Laws 2000, LB 1115, § 93.**

**83-121 School District Reimbursement Fund; created; use; investment.**

There is hereby created the School District Reimbursement Fund for use by the Department of Health and Human Services. The fund shall consist of

money received from school districts or the department pursuant to section 79-1152 for the operation of special education programs within the department. The fund shall be used for the operation of such programs pursuant to sections 79-1152, 79-1153, and 79-1155 to 79-1158.

Any money in the 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.

**Source:** Laws 1994, LB 1194, § 11; Laws 1995, LB 7, § 139; Laws 1996, LB 900, § 1066; Laws 1996, LB 1044, § 907; Laws 2007, LB296, § 783.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**83-122 Repealed. Laws 1971, LB 376, § 7.**

**83-123 Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.**

Out of the fund appropriated by the Legislature, the Department of Correctional Services shall purchase the materials for, manufacture, and deliver the license plates each year to the various county officials in the State of Nebraska. The Department of Motor Vehicles shall furnish the information concerning license plates, together with the number of plates to be manufactured and the designated county official pursuant to section 23-186 for each county in the state for the current licensing year, to the Department of Correctional Services.

**Source:** Laws 1931, c. 22, § 2, p. 95; C.S.Supp.,1941, § 83-137; R.S. 1943, § 83-123; Laws 1951, c. 319, § 2, p. 1091; Laws 1953, c. 207, § 14, p. 730; Laws 1959, c. 442, § 3, p. 1486; Laws 1959, c. 284, § 5, p. 1078; Laws 1969, c. 497, § 2, p. 2067; Laws 1993, LB 31, § 24; Laws 1993, LB 112, § 46.

**83-123.01 Repealed. Laws 1993, LB 31, § 83.**

(b) OFFICERS AND EMPLOYEES

**83-124 Transferred to section 80-325.**

**83-125 Repealed. Laws 2007, LB 296, § 815.**

**83-126 Facilities; chief executive officer; appointment.**

The chief executive officer of the Department of Health and Human Services shall appoint the chief executive officer of each facility referred to in section 83-107.01. Each chief executive officer shall report to the chief executive officer of the department or his or her designee and shall serve full time and without term at the pleasure of the chief executive officer of the department.

**Source:** Laws 1996, LB 1155, § 83; Laws 1997, LB 307, § 220; Laws 2002, LB 1062, § 66; Laws 2007, LB296, § 784.

**83-127 Repealed. Laws 1965, c. 538, § 40.**

**83-128 Officers and employees; bond or insurance.**

Each official and employee who is given the custody of funds or property of the state shall be bonded or insured as required by section 11-201.

**Source:** Laws 1913, c. 179, § 15, p. 541; R.S.1913, § 7193; C.S.1922, § 6844; C.S.1929, § 83-115; Laws 1941, c. 186, § 1, p. 754; C.S.Supp.,1941, § 83-115; R.S.1943, § 83-128; Laws 1978, LB 653, § 36; Laws 2004, LB 884, § 45.

**83-129 Repealed. Laws 1996, LB 1044, § 985.**

**83-129.01 Repealed. Laws 1999, LB 13, § 1.**

**83-130 Emergency Revolving Fund; amount; source; accounting.**

An Emergency Revolving Fund, not to exceed three thousand dollars for any one institution, upon order of the Department of Health and Human Services, shall be drawn from the State Treasurer, to be used by the chief executive officer of each institution as an emergency cash fund. The fund shall be drawn from the general maintenance appropriation for the department. An accounting of this fund shall be made by each executive officer once each month to the department.

**Source:** Laws 1913, c. 179, § 15, p. 541; R.S.1913, § 7193; C.S.1922, § 6844; C.S.1929, § 83-115; Laws 1941, c. 186, § 1, p. 754; C.S.Supp.,1941, § 83-115; R.S.1943, § 83-130; Laws 1951, c. 321, § 1, p. 1093; Laws 1996, LB 1044, § 909; Laws 2007, LB296, § 785.

**83-131 Repealed. Laws 1969, c. 817, § 87.**

**83-132 Repealed. Laws 1961, c. 416, § 32.**

**83-133 Chief executive officers; excess funds belonging to inmates; investment; use and distribution of income.**

The chief executive officer of any state institution under the control of the Department of Health and Human Services shall refer for investment in accordance with sections 72-1244 and 72-1267 any surplus of canteen funds or trust funds which he or she may have belonging to the residents of the institution under his or her control. The income accruing from the investment of canteen funds shall be used for the general entertainment of the residents of the institution. The income accruing from the investment of the residents' personal trust funds shall be distributed and prorated to each resident's personal trust account in accordance with the participation of each resident's personal account.

**Source:** Laws 1929, c. 195, § 1, p. 682; C.S.1929, § 83-201; R.S.1943, § 83-133; Laws 1985, LB 335, § 4; Laws 1996, LB 1044, § 910; Laws 2003, LB 149, § 6.

#### (c) PROPERTY AND SUPPLIES

**83-134 Repealed. Laws 2007, LB 256, § 17.**

**83-135 Grounds; abutting streets; paving; procedure.**

The Department of Health and Human Services and the Department of Correctional Services shall have authority to petition the authorities of any city,

town, or village in which a state institution is located, to grade, curb, and pave any street or streets upon which the grounds of the institution abut, where the streets are a part of a paving district, to waive any damage sustained by the grounds from the grading, curbing, or paving, and to charge the grounds with a proportionate share of the cost of paving. The contract for grading, curbing, and paving shall be let by the authorities of the city, town, or village, as provided for by the law governing the city, town, or village, and none of the provisions for the letting of contracts by the department shall apply. The cost of paving, including curbing and grading, assessed and levied against the property, shall be paid to the proper officers of the city, town, or village, by the State Treasurer, out of funds which may be appropriated by the Legislature for that purpose.

**Source:** Laws 1913, c. 179, § 22, p. 544; R.S.1913, § 7200; Laws 1915, c. 129, § 1, p. 291; C.S.1922, § 6851; C.S.1929, § 83-122; R.S.1943, § 83-135; Laws 1973, LB 563, § 25; Laws 1996, LB 1044, § 912.

#### Cross References

For provisions relating to improvement of county roads adjacent to institutional grounds, see sections 39-1619 and 39-1633.

### **83-136 Paving petitions; power to sign.**

Wherever any paving district is created adjacent to any state institution or the Nebraska State Fairgrounds, the chief executive officer in charge of the state institution or the chairperson of the Nebraska State Fair Board for the fairgrounds is authorized to sign petitions, in the name of the state, to create paving districts.

**Source:** Laws 1919, c. 215, § 1, p. 926; C.S.1922, § 6861; C.S.1929, § 83-132; R.S.1943, § 83-136; Laws 2002, LB 1236, § 20.

County commissioners are authorized to count the state's property as favoring the improvement when a petition is signed by the officers having charge of state institutions. *Brown Real Estate Co. v. Lancaster County*, 108 Neb. 514, 188 N.W. 247 (1922).

### **83-137 State institutions; adjacent highways; improvement.**

Upon written request being filed with the Department of Roads by the chief executive officer of any state institution, located more than one-half mile and not exceeding three miles from a railroad unloading track or permanent highway leading to a railroad unloading track, requesting aid for the improvement of a highway connecting the institution with the permanent highway or railroad unloading track, the department shall make a careful estimate of the cost of improving the highway, and the amount of the special benefits to abutting property, together with the excess of the cost of the improvement above the benefits. If the local authorities in charge of the highway shall adequately provide for the payment of the special benefits and one-half of the excess of the cost of the improvement, the department shall pay the remaining one-half of the excess from funds appropriated for that purpose.

**Source:** Laws 1919, c. 215, § 2, p. 927; C.S.1922, § 6862; C.S.1929, § 83-133.

#### Cross References

Procedure for acquiring institutional land for county roads and state highways, see sections 39-1323 and 39-1703.

### **83-138 Repealed. Laws 1963, c. 508, § 15.**

### **83-139 Stewards; duties; reports; shortages; default; penalty.**

The steward of each institution shall have charge of all supplies for that institution, and shall be charged therewith at their invoice value. Supplies shall be issued only on requisition by the chief executive officer, and on printed blanks which shall serve as the steward's vouchers. The steward shall report monthly to the Department of Health and Human Services or the Department of Correctional Services, whichever has jurisdiction, the amounts of supplies received, used, and on hand. At the close of the biennial period the steward shall make a comprehensive report to the department showing all the transactions of his or her department. Any shortage, not allowed by the department for unavoidable causes, shall be paid for by the steward within ten days after the amount due is officially determined, and in default of payment the steward shall forfeit his or her office and suit to recover the amount shall be instituted upon his or her official bond or equivalent commercial insurance policy.

**Source:** Laws 1913, c. 179, § 14, p. 540; R.S.1913, § 7192; C.S.1922, § 6843; C.S.1929, § 83-114; R.S.1943, § 83-139; Laws 1973, LB 563, § 26; Laws 1996, LB 1044, § 913; Laws 2004, LB 884, § 46.

**83-140 Supplies for Department of Health and Human Services and Department of Correctional Services; purchase; monthly statement; estimates.**

The materiel administrator of the Department of Administrative Services shall purchase all necessary supplies for the institutions under the Department of Health and Human Services and the Department of Correctional Services, except, in its discretion, fresh fruit, vegetables, and emergency and minor purchases. The last-named supplies may be purchased by the chief executive officer or steward under the order of the department. An itemized statement of such purchases, duly verified, shall be filed with the department on the first day of each month. Estimates of needed supplies shall be furnished the department by each chief executive officer. Such estimates shall be examined by the department, and an itemized statement of such as are approved by the department, showing kind, quantity, and quality, shall be filed with the materiel administrator, and upon request shall be furnished to any applicant therefor.

**Source:** Laws 1913, c. 179, § 21, p. 543; R.S.1913, § 7199; C.S.1922, § 6850; C.S.1929, § 83-121; R.S.1943, § 83-140; Laws 1951, c. 322, § 1, p. 1094; Laws 1957, c. 368, § 4, p. 1295; Laws 1973, LB 563, § 27; Laws 1996, LB 1044, § 914; Laws 2000, LB 654, § 46.

**Cross References**

For other provisions relating to the materiel division of Department of Administrative Services, see sections 81-145 to 81-162.

**83-141 Repealed. Laws 1957, c. 368, § 7.**

**83-142 Repealed. Laws 1969, c. 818, § 24.**

**83-143 Paupers; inmates of public charitable institutions; clothing; county of last residence to furnish.**

Whenever any inmate of any public charitable institution shall be unable to provide suitable clothing for himself, and shall have no parent or legal guardian able and legally bound to do so, the county board of the county where the inmate last resided, before entering or applying for admission into the institution, shall adjudge and declare the inmate a pauper. The proper officers of the

institution shall then provide suitable clothing for such person, and the inmate shall send the bill therefor to the county board. The county board shall then audit and allow the bill and cause a warrant therefor to be drawn upon the general fund of the county in favor of the officers of the institution.

**Source:** Laws 1875, § 1, p. 177; R.S.1913, § 7208; C.S.1922, § 6859; C.S.1929, § 83-130.

**83-144 Department of Correctional Services-made goods; Department of Health and Human Services and Department of Correctional Services; administrative powers.**

The Department of Health and Human Services and the Department of Correctional Services shall administer the provisions of sections 83-144 to 83-152.

**Source:** Laws 1935, c. 183, § 1, p. 678; C.S.Supp.,1941, § 83-956; R.S.1943, § 83-144; Laws 1963, c. 526, § 6, p. 1650; Laws 1973, LB 563, § 28; Laws 1996, LB 1044, § 915.

**Cross References**

Provisions relating to materiel division not applicable to purchase or use of prison-made goods, see section 81-146.

**83-145 Department of Correctional Services-made goods; use; by whom; exchange of goods with other states; sales authorized.**

All departments, institutions, and agencies of this state which are supported in whole or in part by taxation for state purposes and all counties and other political subdivisions of this state shall purchase from the Department of Correctional Services all articles required by them produced, printed, or manufactured by offenders confined in facilities of the Department of Correctional Services, or elsewhere, including products of any farms operated by the department unless such articles of equal quality and materials could be purchased from another supplier at a lesser cost. The quality and materials must be certified as being equal by the materiel division of the Department of Administrative Services. No such article shall be purchased by any department, institution, or agency of the state from any other source unless excepted from the provisions of this section as provided in sections 83-144 to 83-152. Printing by offenders shall be restricted to such as may be required at the various institutions under the jurisdiction of the department and such other printing requirements as may be determined by the materiel division of the Department of Administrative Services pursuant to subdivision (3) of section 81-1118. No products of any institutional printing plant, other than that used by departments, institutions, agencies, and other political subdivisions of the state, shall be sold in competition with outside labor. Nothing in this section shall be construed to prohibit the department from exchanging Department of Correctional Services-made goods with other states. Goods received from divisions of corrections outside of Nebraska shall be of the same status and will be subject to the same restrictions and penalties as if they had been manufactured in the Nebraska Department of Correctional Services. In cases of exchange of Department of Correctional Services-made goods with other states, the department is authorized to pay or receive in cash any differences that may exist in the articles exchanged, the amounts paid or received to be charged or credited to the Correctional Industries Revolving Fund. In exchange of Department of Correctional Services-made goods with other states, the goods received in

exchange shall be restricted to such use and needs as may be required in the various institutions under the jurisdiction of the department. Any authorized agency, bureau, commission, or department of the federal government or any charitable, fraternal, or nonprofit corporation may purchase from the Department of Correctional Services goods produced or manufactured by offenders confined in facilities of the Department of Correctional Services, or elsewhere, including products of any farms operated by the department.

**Source:** Laws 1935, c. 183, § 2, p. 678; Laws 1937, c. 201, § 1, p. 824; C.S.Supp.,1941, § 83-957; R.S.1943, § 83-145; Laws 1967, c. 602, § 1, p. 2044; Laws 1969, c. 820, § 1, p. 3125; Laws 1973, LB 563, § 29; Laws 1974, LB 569, § 1; Laws 1980, LB 319, § 7; Laws 1981, LB 381, § 33; Laws 1983, LB 594, § 1; Laws 1992, Third Spec. Sess., LB 2, § 1.

**83-145.01 Department of Correctional Services; sale and production of braille materials; authorized.**

The Department of Correctional Services may sell braille books and materials produced by offenders confined in facilities of the department. The department may enter into contracts for the use of the services of such offenders to produce braille books and materials. The department may also service any braille machinery needed to produce braille products.

**Source:** Laws 1983, LB 594, § 2; Laws 1993, LB 121, § 547; Laws 2002, LB 951, § 1.

**83-146 Purchases; Department of Administrative Services; requisition.**

All purchases shall be made through the Department of Administrative Services upon the requisition of the proper authority of the department, institution or agency of the state, or of the county or other governmental subdivision requiring such articles.

**Source:** Laws 1935, c. 183, § 3, p. 679; C.S.Supp.,1941, § 83-958; R.S.1943, § 83-146; Laws 1967, c. 603, § 1, p. 2045.

**83-147 Director of Administrative Services; Department of Correctional Services-made goods; discretionary powers.**

The Director of Administrative Services may create an exception from the mandatory provisions of sections 83-144 to 83-152 when in the opinion of the director, the article produced or manufactured does not meet the reasonable requirements of the department, institution, or agency of the state. The Director of Correctional Services may create an exception from the mandatory provisions of sections 83-144 to 83-152 in any case when the requisition made cannot be completely complied with on account of an insufficient supply of the article or supplies required, or otherwise. No such department, institution, or agency of the state shall be allowed to evade the intent and meaning of this section by slight violations from standards adopted by the department, when articles produced or manufactured by it in accordance with its standards are reasonably adapted to the actual needs of the department, institution, or agency.

**Source:** Laws 1935, c. 183, § 4, p. 679; C.S.Supp.,1941, § 83-959; R.S.1943, § 83-147; Laws 1961, c. 416, § 20, p. 1273; Laws 1973, LB 563, § 30; Laws 1981, LB 381, § 34.

**83-148 Unauthorized vouchers; issuance; effect; malfeasance in office; punishment.**

No voucher issued by any such department, institution or agency upon the Director of Administrative Services shall be questioned by him or by the State Treasurer on the ground that sections 83-144 to 83-152 shall not have been complied with by the department, institution or agency; but intentional violation of the provisions of such sections by any department, institution or agency continued after notice in writing from the Department of Correctional Services to desist, shall constitute malfeasance in office, and shall subject the officer, officers or public employees responsible for the violations to suspension or removal from office, in the manner provided by law in other cases of malfeasance.

**Source:** Laws 1935, c. 183, § 5, p. 679; C.S.Supp.,1941, § 83-960; R.S.1943, § 83-148; Laws 1973, LB 563, § 31.

**83-149 Department of Correctional Services-made goods; catalog; estimates of materials required.**

The Department of Correctional Services shall prepare, annually, and at such other times as it may determine necessary, a catalog or bulletin sheets containing a description of all articles and supplies manufactured and produced by the department under sections 83-144 to 83-152. Copies of the catalog and bulletin sheets shall be sent by said department to all departments, institutions and agencies of the state referred to in section 83-145. On or before June 15 of each year, each constitutional state officer, each head of every executive department of the state and each titular head of each institution and other agency of the state shall report in writing to the Department of Administrative Services, estimates for the ensuing year commencing July 1, or ensuing quarter, if desired, the kinds and amounts of articles and supplies required by them for the ensuing year or quarter, referring in such estimates to the catalog and bulletin sheets issued by the Department of Correctional Services insofar as the articles and supplies indicated are included in the catalog or bulletin sheets.

**Source:** Laws 1935, c. 183, § 6, p. 680; C.S.Supp.,1941, § 83-961; R.S.1943, § 83-149; Laws 1967, c. 603, § 2, p. 2046; Laws 1973, LB 563, § 32.

**83-150 Correctional Industries Revolving Fund; created; use; investment.**

All funds received by the Department of Correctional Services under sections 83-144 to 83-152 shall be remitted to the State Treasurer for credit to the Correctional Industries Revolving Fund, which fund is hereby created. The fund shall be administered by the Director of Correctional Services. The fund shall be used to pay all proper expenses incident to the administration of sections 83-144 to 83-152, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Correctional Industries Revolving 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.

**Source:** Laws 1935, c. 183, § 9, p. 681; Laws 1939, c. 135, § 1, p. 580; C.S.Supp.,1941, § 83-964; R.S.1943, § 83-150; Laws 1959, c.

442, § 5, p. 1487; Laws 1969, c. 820, § 2, p. 3126; Laws 1969, c. 584, § 111, p. 2417; Laws 1973, LB 563, § 33; Laws 1992, Third Spec. Sess., LB 2, § 2; Laws 1994, LB 1066, § 129.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**83-151 Department of Correctional Services-made goods; transportation and sale.**

Goods produced in whole or in part by persons confined to the department in this state may be transported and sold in the same manner as goods produced by free persons, if persons confined to the department are paid at least minimum wage under state law. The minimum wage requirement does not apply to hobby and craft items produced by persons committed to the department on their own time with their own resources.

**Source:** Laws 1935, c. 183, § 11, p. 682; C.S.Supp.,1941, § 83-966; R.S.1943, § 83-151; Laws 1969, c. 820, § 3, p. 3126; Laws 1969, c. 817, § 73, p. 3108; Laws 1972, LB 1122, § 1; Laws 1977, LB 39, § 309; Laws 1980, LB 319, § 8.

Pursuant to the provisions of this section, any money derived from the sale of a hobby or craft item made by an offender is to be placed in the offender's account and the Department of

Corrections may not assess a handling charge against the offender. *Randolph v. Dept. of Correctional Services*, 205 Neb. 672, 289 N.W.2d 529 (1980).

**83-152 Goods made by confined persons; reciprocity.**

Goods produced in whole or in part by persons confined in another state or territory may be transported and sold in this state in the same manner as goods produced by persons committed to the department in this state may be transported or sold in that state or territory.

**Source:** Laws 1935, c. 183, § 10, p. 681; C.S.Supp.,1941, § 83-965; R.S.1943, § 83-152; Laws 1969, c. 820, § 4, p. 3127; Laws 1969, c. 817, § 74, p. 3108; Laws 1980, LB 319, § 9.

**83-153 Money or personal property to credit of inmate or patient; claim; time for presentment.**

Any claim to money or personal property in the hands of the Department of Health and Human Services or the Department of Correctional Services to the credit of an inmate or patient of any institution subject to the jurisdiction of such departments shall be required to be asserted within two years from and after either (1) the date of the death of the inmate or patient, while confined in such institution, or (2) the date of the discharge of the inmate or patient from such institution. If such claim is not presented within the time limited by this section, it shall be forever barred.

**Source:** Laws 1953, c. 352, § 1, p. 1128; Laws 1973, LB 563, § 34; Laws 1996, LB 1044, § 916.

**83-154 Money to credit of inmate or patient; claim; failure to assert; disposition.**

Upon the failure to assert a claim for money within two years as prescribed by section 83-153, the Department of Health and Human Services or the Department of Correctional Services shall transfer such money to a special

fund to be set up for the use and benefit of all the inmates or patients of the institution in which the deceased or discharged inmate or patient was confined.

**Source:** Laws 1953, c. 352, § 2, p. 1128; Laws 1973, LB 563, § 35; Laws 1996, LB 1044, § 917.

**83-155 Personal property to credit of inmate or patient; claim; failure to assert; sale; disposition of money.**

Upon the failure to assert a claim for personal property within two years as prescribed by section 83-153, the Department of Health and Human Services or the Department of Correctional Services shall sell the property, either with or without notice at either public or private sale, and shall place the proceeds of such sale in the special fund provided for by section 83-154.

**Source:** Laws 1953, c. 352, § 3, p. 1128; Laws 1973, LB 563, § 36; Laws 1996, LB 1044, § 918.

**83-156 Money or personal property to credit of inmate or patient; delivery to owner or heirs not prohibited.**

Nothing contained in sections 83-153 to 83-156 shall be construed in such a manner as to prohibit the Department of Health and Human Services or the Department of Correctional Services from voluntarily remitting or delivering to any present or former inmate or patient of any state institution, subject to the jurisdiction of such department, or to his or her heirs, legatees, or other persons lawfully entitled to the same, any money or other personal property in the hands of the department to the credit of such inmate or patient, either during the confinement of such inmate or patient, or at any time thereafter.

**Source:** Laws 1953, c. 352, § 4, p. 1128; Laws 1973, LB 563, § 37; Laws 1996, LB 1044, § 919.

(d) SALE OF REAL ESTATE

**83-157 Repealed. Laws 1971, LB 33, § 1.**

**83-158 Repealed. Laws 1971, LB 33, § 1.**

(e) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES ACT

**83-158.01 Repealed. Laws 2004, LB 1083, § 149.**

**83-159 Repealed. Laws 2004, LB 1083, § 149.**

**83-160 Repealed. Laws 2004, LB 1083, § 149.**

**83-160.01 Repealed. Laws 1987, LB 9, § 1.**

**83-161 Repealed. Laws 1980, LB 684, § 22.**

**83-161.01 Repealed. Laws 1986, LB 674, § 9.**

**83-161.02 Repealed. Laws 2004, LB 1083, § 149.**

**83-162 Repealed. Laws 1980, LB 684, § 22.**

**83-162.01 Repealed. Laws 2004, LB 1083, § 149.**

**83-162.02 Repealed. Laws 2004, LB 1083, § 149.**

**83-162.03 Repealed. Laws 2004, LB 1083, § 149.**

**83-162.04 Transferred to section 71-817.**

**83-162.05 Repealed. Laws 1997, LB 307, § 236.**

**83-162.06 Repealed. Laws 2001, LB 541, § 12.**

**83-163 Repealed. Laws 2004, LB 1083, § 149.**

**83-164 Repealed. Laws 2004, LB 1083, § 149.**

**83-165 Repealed. Laws 2004, LB 1083, § 149.**

**83-166 Repealed. Laws 2004, LB 1083, § 149.**

**83-167 Repealed. Laws 2004, LB 1083, § 149.**

**83-168 Repealed. Laws 2004, LB 1083, § 149.**

**83-169 Repealed. Laws 2004, LB 1083, § 149.**

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

**83-170 Terms, defined.**

As used in the Nebraska Treatment and Corrections Act, unless the context otherwise requires:

- (1) Administrator shall mean the Parole Administrator;
- (2) Board shall mean the Board of Parole;
- (3) Committed offender shall mean any person who, under any provision of law, is sentenced or committed to a facility operated by the department or is sentenced or committed to the department other than a person adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 by a juvenile court;
- (4) Department shall mean the Department of Correctional Services;
- (5) Director shall mean the Director of Correctional Services;
- (6) Facility shall mean any prison, reformatory, training school, reception center, community guidance center, group home, or other institution operated by the department;
- (7) Good time shall mean any reduction of sentence granted pursuant to sections 83-1,107 and 83-1,108;
- (8) Maximum term shall mean the maximum sentence provided by law or the maximum sentence imposed by a court, whichever is shorter;
- (9) Minimum term shall mean the minimum sentence provided by law or the minimum sentence imposed by a court, whichever is longer;
- (10) Pardon authority shall mean the power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations;
- (11) Parole term shall mean the time from release on parole to the completion of the maximum term, reduced by good time; and

(12) Person committed to the department shall mean any person sentenced or committed to a facility within the department.

**Source:** Laws 1969, c. 817, § 1, p. 3072; Laws 1973, LB 563, § 38; Laws 1975, LB 567, § 1; Laws 1976, LB 621, § 1; Laws 1988, LB 790, § 34; Laws 1992, LB 816, § 1.

Applies retroactively to prisoners who receive Board of Pardon approval. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

This section is not applicable to the imposition of a sentence by the trial court. *State v. Suggestt*, 189 Neb. 714, 204 N.W.2d 793 (1973).

Under life sentence with no minimum stated, the statutory minimum of ten years for second degree murder would apply for purposes of eligibility for parole. *State v. Thompson*, 189 Neb. 115, 201 N.W.2d 204 (1972).

### **83-171 Department of Correctional Services; created; duties.**

There is hereby created a Department of Correctional Services which shall:

(1) Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department and for the safekeeping of such other persons as may be remanded to the department in accordance with law;

(2) Supervise persons committed to the department on parole and administer parole services in the facilities and in the community; and

(3) Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department.

**Source:** Laws 1969, c. 817, § 2, p. 3073; Laws 1973, LB 563, § 39; Laws 1993, LB 31, § 26.

### **83-172 Director of Correctional Services; appointment; salary; qualifications.**

The Governor shall appoint and fix the salary of the Director of Correctional Services with the approval of the Legislature. The Director of Correctional Services shall be qualified for his position by appropriate training and experience in corrections and such director shall have a minimum of ten years of correctional administrative work.

**Source:** Laws 1969, c. 817, § 3, p. 3073; Laws 1973, LB 563, § 40.

### **83-173 Director of Correctional Services; duties.**

The Director of Correctional Services shall:

(1) Supervise and be responsible for the administration of the Department of Correctional Services;

(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof and delegate appropriate powers and duties to them;

(3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the department;

(4) Appoint and remove the chief executive officer of each facility and delegate appropriate powers and duties to him or her;

(5) Appoint and remove employees of the department and delegate appropriate powers and duties to them;

(6) Adopt and promulgate rules and regulations for the management, correctional treatment, and rehabilitation of persons committed to the department, the administration of facilities, and the conduct of officers and employees under his or her jurisdiction;

(7) Designate the place of confinement of persons committed to the department subject to section 83-176;

(8) Collect, develop, and maintain statistical information concerning persons committed to the department, sentencing practices, and correctional treatment as may be useful in penological research or in the development of treatment programs;

(9) Provide training programs designed to equip employees for duty in the facilities and related services of the department and to raise and maintain the educational standards and the level of performance of such employees;

(10) Notify law enforcement agencies of upcoming furloughs as required by section 83-173.01;

(11) Issue or authorize the issuance of a warrant for the arrest of any person committed to the department who has escaped from the custody of the department; and

(12) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 817, § 4, p. 3074; Laws 1973, LB 563, § 41; Laws 1979, LB 322, § 64; Laws 1980, LB 794, § 3; Laws 1981, LB 545, § 42; Laws 1986, LB 481, § 1.

Prison authorities had no right, absent statutory authority, to prescribe and enforce regulations authorizing forfeiture of money discovered in the possession of inmates as a punitive measure and their actions in so doing violated due process. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

**83-173.01 Director of Correctional Services; release of certain convicts; duties.**

Two weeks prior to releasing a person convicted of a Class IA felony or sexual assault in the first degree on furlough, the Director of Correctional Services shall deliver a copy of the release authorization to at least one law enforcement agency in the jurisdiction in which such person is authorized to temporarily reside.

**Source:** Laws 1986, LB 481, § 3.

**83-174 Registered sex offender; release or termination of supervision; notice required; county attorney; duties.**

(1) At least ninety days prior to the release from incarceration or civil commitment or the termination of probation or parole supervision of an individual who is required to register under section 29-4003, the agency with jurisdiction over the individual shall provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which an individual is incarcerated, supervised, or committed.

(2) The Board of Parole shall also provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which such individual is incarcerated or committed within five days after scheduling a parole hearing for an individual who is required to register under section 29-4003.

(3) A county attorney shall, no later than forty-five days after receiving notice of the pending release of an individual pursuant to this section, notify the Attorney General whether the county attorney intends to initiate civil commitment proceedings against such individual upon his or her release from custody.

**Source:** Laws 2006, LB 1199, § 86.

**83-174.01 Dangerous sex offender; terms, defined.**

For purposes of sections 83-174 to 83-174.05:

(1) Dangerous sex offender means (a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior or (b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

**Source:** Laws 2006, LB 1199, § 87.

**83-174.02 Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice.**

(1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 28-319.01 or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 28-319.01; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section

28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

**Source:** Laws 2006, LB 1199, § 88.

**Cross References**

**Sex Offender Registration Act**, see section 29-4001.

**83-174.03 Certain sex offenders; supervision by Office of Parole Administration; notice prior to release; risk assessment and evaluation; conditions of community supervision.**

(1) Any individual who, on or after July 14, 2006, (a) is convicted of or completes a term of incarceration for an offense requiring registration under section 29-4003 and has a previous conviction for a registerable offense, (b) is convicted of sexual assault of a child in the first degree pursuant to section 28-319.01, or (c) is convicted of or completes a term of incarceration for an aggravated offense as defined in section 29-4005, shall, upon completion of his or her term of incarceration or release from civil commitment, be supervised in the community by the Office of Parole Administration for the remainder of his or her life.

(2) Notice shall be provided to the Office of Parole Administration by an agency or political subdivision which has custody of an individual required to be supervised in the community pursuant to subsection (1) of this section at least sixty days prior to the release of such individual from custody.

(3) Individuals required to be supervised in the community pursuant to subsection (1) of this section shall undergo a risk assessment and evaluation by the Office of Parole Administration to determine the conditions of community supervision to be imposed to best protect the public from the risk that the individual will reoffend.

(4) Conditions of community supervision imposed on an individual by the Office of Parole Administration may include the following:

(a) Drug and alcohol testing if the conviction resulting in the imposition of community supervision involved the use of drugs or alcohol;

(b) Restrictions on employment and leisure activities necessary to minimize interaction with potential victims;

(c) Requirements to report regularly to the individual's community supervision officer;

(d) Requirements to reside at a specified location and notify the individual's community supervision officer of any change in address or employment;

(e) A requirement to allow the Office of Parole Administration access to medical records from the individual's current and former providers of treatment;

(f) A requirement that the individual submit himself or herself to available medical, psychological, psychiatric, or other treatment, including, but not limited to, polygraph examinations; or

(g) Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive.

**Source:** Laws 2006, LB 1199, § 89.

**83-174.04 Violation of condition of community supervision; actions authorized.**

An individual who violates one or more of the conditions of community supervision established for him or her pursuant to section 83-174.03 shall undergo a review by the Office of Parole Administration to evaluate the risk posed to the public by the violation in question. The office may take any of the following actions in response to a violation of conditions of community supervision:

(1) Revise or impose additional conditions of community supervision in order to minimize the risk to the public from the continued presence of the individual in the community;

(2) Forward to the Attorney General or the county attorney in the county where the individual resides a request to initiate a criminal prosecution for failure to comply with the terms of community supervision; or

(3) Forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted with respect to the individual.

**Source:** Laws 2006, LB 1199, § 90.

**83-174.05 Violation of conditions of community supervision; penalty.**

Failure to comply with the conditions of community supervision imposed by the Office of Parole Administration is a Class IV felony for the first offense and a Class III felony for any subsequent offense.

**Source:** Laws 2006, LB 1199, § 91.

**83-175 Committed person; treatment; duties.**

Whenever the Director of Correctional Services finds that a person committed to the department requires specialized treatment, or treatment of a kind that is not feasible to provide within the department, the director may place such person in institutions providing such treatment in another jurisdiction and may agree to pay reimbursement therefor. A person so transferred to an out-of-state institution shall be subject to the rules and regulations of such institution concerning the custody, conduct, and discipline of its inmates but shall remain subject to the Nebraska Treatment and Corrections Act concerning his or her term, reduction of term, and release on parole.

**Source:** Laws 1969, c. 817, § 6, p. 3075; Laws 1997, LB 396, § 24.

**83-176 Director of Correctional Services; designate place of confinement.**

(1) Whenever any person is sentenced or committed under any provision of law to a specific facility within the department or to the custody of the warden or superintendent of such facility, he or she shall be deemed to be sentenced or committed to the department.

(2) The director may designate as a place of confinement of a person committed to the department any available, suitable, and appropriate residence facility or institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another.

**Source:** Laws 1969, c. 817, § 7, p. 3075; Laws 1973, LB 57, § 1; Laws 1988, LB 790, § 35; Laws 1993, LB 31, § 27; Laws 1996, LB 1044, § 923.

**83-177 Facility; chief executive officer; designation.**

There shall be in each facility a chief executive officer designated as warden or superintendent and such deputy or associate wardens or assistant superintendents as the director determines. The chief executive officer shall be responsible to the director for the custody, control, and correctional treatment of persons committed to the department and for the general administration of the facility. Deputy or associate wardens or assistant superintendents in each facility shall advise and be responsible to the chief executive officer of the facility and shall have such powers and duties as the chief executive officer delegates to them in accordance with law or pursuant to the directions of the director.

**Source:** Laws 1969, c. 817, § 8, p. 3076; Laws 1993, LB 31, § 28.

**83-178 Director; records; contents; confidential; classification and treatment of persons committed.**

(1) The director shall establish and maintain, in accordance with the regulations of the department, an individual file for each person committed to the department. Each individual file shall include, when available and appropriate, the following information on such person:

- (a) His or her admission summary;
- (b) His or her presentence investigation report;
- (c) His or her classification report and recommendation;
- (d) Official records of his or her conviction and commitment as well as any earlier criminal records;
- (e) Progress reports and admission-orientation reports;
- (f) Reports of any disciplinary infractions and of their disposition;
- (g) His or her parole plan; and
- (h) Other pertinent data concerning his or her background, conduct, associations, and family relationships.

(2) Any decision concerning the classification, reclassification, transfer to another facility, preparole preparation, or parole release of a person committed to the department shall be made only after his or her file has been reviewed. The content of the file shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to any person committed to the department. An inmate may obtain access to his or her medical records by request to the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the fact that such medical records may be a part of his or her individual department file. The department retains the authority to withhold mental health and psychological records of the inmate when appropriate.

(3) The program of each person committed to the department shall be reviewed at regular intervals and recommendations shall be made to the chief executive officer concerning changes in such person's program of treatment, training, employment, care, and custody as are considered necessary or desirable.

(4) The chief executive officer of the facility shall have final authority to determine matters of treatment classification within his or her facility and to recommend to the director the transfer of any person committed to the department who is in his or her custody.

(5) The director may at any time order a person committed to the department to undergo further examination and study for additional recommendations concerning his or her classification, custodial control, and rehabilitative treatment.

(6) Nothing in this section shall be construed to limit in any manner the authority of the Public Counsel to inspect and examine the records and documents of the department pursuant to sections 81-8,240 to 81-8,254, except that the Public Counsel's access to an inmate's medical or mental health records shall be subject to the inmate's consent. The office of Public Counsel shall not disclose an inmate's medical or mental health records to anyone else, including any person committed to the department, except as authorized by law.

**Source:** Laws 1969, c. 817, § 9, p. 3076; Laws 1993, LB 31, § 29; Laws 2001, LB 15, § 1.

Because this section requires that files be maintained in accordance with the regulations of the department, it is clear from the Department of Correctional Services' own regulations that records of disciplinary proceedings need not be maintained

where the result of those proceedings is dismissed on appeal. *Nissen v. Nebraska Dept. of Corr. Servs.*, 8 Neb. App. 865, 602 N.W.2d 672 (1999).

**83-179 Person committed; physical examination; evaluation; contents; recommendations.**

Upon initial admission to a facility, each person committed to the department shall be given a physical examination and a thorough evaluation. The evaluation shall include such person's psychological, social, educational, and vocational condition and history and the motivation of the offense. A report containing the findings of the examination and evaluation shall be submitted on each such person to the chief executive officer of the facility. The report shall include recommendations regarding the facility to which such person should be assigned, the degree and kind of custodial control, and the program of treatment for rehabilitation, including medical and psychological treatment and educational and vocational training. A medical determination shall be made as to whether such person shall be kept apart from other persons committed to the department.

**Source:** Laws 1969, c. 817, § 10, p. 3078; Laws 1993, LB 31, § 30.

**83-180 Physician or psychologist; designation; duties; transfer of person committed; jurisdiction; release; conditions.**

(1) When a physician designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect, or when a physician or psychologist designated by the director finds that a person committed to the department suffers from a mental disease or defect, the chief executive officer may order such person to be segregated from other persons in the facility. If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his or her transfer for examination, study, and treatment to any medical-correctional facility, or to another institution in the Department of Health and Human Services where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, treatment in such facility is no longer necessary.

(2) When the physician or psychologist designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical or mental disease or defect which in his or her opinion cannot be properly treated in any facility or institution in the Department of Health and Human Services, the director may arrange for his or her transfer for treatment to a hospital or psychiatric facility outside the department. The director shall make appropriate arrangements with other public or private agencies for the transportation to, and for the care, custody, and security of the person in, such hospital or psychiatric facility. While receiving treatment in such hospital or psychiatric facility, the person shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, such hospital or psychiatric treatment is no longer necessary.

(3) When two psychiatrists designated by the Director of Correctional Services find that a person about to be released or discharged from any facility suffers from a mental disease or defect of such a nature that his or her release or discharge will endanger the public safety or the safety of the offender, the

director shall transfer him or her to, or if he or she has already been transferred, permit him or her to remain in, a psychiatric facility in the Department of Health and Human Services and shall promptly commence proceedings applicable to the civil commitment and detention of persons suffering from such disease or defect.

**Source:** Laws 1969, c. 817, § 11, p. 3078; Laws 1996, LB 1044, § 924.

Failure to return to a hospital after a temporary leave constitutes an escape from custody. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

In order for application of this section to be constitutional, a prisoner must be provided, prior to transfer, with written notice, a hearing before an independent factfinder, qualified independent

assistance at the hearing, a written decision, and notice of the above rights. *Vitek v. Jones*, 445 U.S. 480 (1980).

Involuntary transfer of prisoner into more controlled confinement, for those mentally diseased or defective, requires transfer-ee be afforded due process of notice, hearing, counsel, and confrontation of witnesses. *Miller v. Vitek* 437 F.Supp. 569 (D. Neb. 1977).

### **83-181 Person committed; health care; food and clothing.**

Each person committed to the Department of Correctional Services shall have regular medical and dental care. Each person shall be adequately fed and clothed in accordance with the regulations of the Department of Correctional Services. No offender shall be required to wear stripes or other degrading apparel.

**Source:** Laws 1969, c. 817, § 12, p. 3079.

### **83-182 Director; establish programs.**

The director shall establish appropriate programs for each facility designed as far as practical to prepare and assist each person committed to the department to assume his or her responsibilities as a useful citizen. In developing such programs, the director shall seek to make available to each person capable of benefiting therefrom academic or vocational training, participation in productive work, religious and recreational activities, and such therapeutic measures as are practicable. No person shall be ordered or compelled to participate in religious activities.

**Source:** Laws 1969, c. 817, § 13, p. 3079; Laws 1993, LB 31, § 31.

Evidence held insufficient to show denial of property rights afforded under sections 83-182 and 83-183. *Journey v. Vitek*, 685 F.2d 239 (8th Cir. 1982).

#### **83-182.01 Structured programming.**

(1) Structured programming shall be planned for all adult persons committed to the department. The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management, and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:

- (a) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;
- (b) Drug and alcohol use and addiction;
- (c) Health and medical needs;
- (d) Education and related services;
- (e) Counseling services for persons committed to the department who have been physically or sexually abused;
- (f) Work ethic and structured work programs; and

(g) The development and enhancement of job acquisition skills and job performance skills.

(2) The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility.

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she shall be subject to disciplinary action.

(4) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

**Source:** Laws 1995, LB 371, § 29; Laws 1997, LB 364, § 18.

**83-183 Persons committed; employment; wages; use; rules and regulations.**

(1) To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law. To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except for school districts, educational service units, community colleges, state colleges, or universities, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions.

(2) The director shall make rules and regulations governing the hours, conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, and the economic value of similar work outside of correctional facilities.

(3) Except as provided in section 83-183.01, wage payments to a person committed to the department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such person committed to the department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, and to set aside sums to be paid to him or her at the time of his or her release from the facility.

(4) The director may authorize the chief executive officer to invest the earnings of a person committed to the department. Any accrued interest thereon shall be credited to such person's fund.

(5) The director may authorize the chief executive officer to reimburse the state from the wage fund of a person committed to the department for:

(a) The actual value of property belonging to the state or any other person intentionally or recklessly destroyed by such person committed to the department during his or her commitment;

(b) The actual value of the damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person by such person committed to the department;

(c) The actual cost to the state for injuries or other damages caused by intentional acts of such person committed to the department; and

(d) The reasonable costs incurred in returning such person committed to the department to the facility to which he or she is committed in the event of his or her escape.

(6) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he or she is declared unfit by a physician designated by the director. No person who performs labor or work pursuant to this section shall be required to wear manacles, shackles, or other restraints.

(7) The director may authorize that a portion of the earnings of a person committed to the department be retained by that person for personal use.

**Source:** Laws 1969, c. 817, § 14, p. 3080; Laws 1980, LB 319, § 10; Laws 1993, LB 31, § 32; Laws 1994, LB 889, § 1; Laws 1999, LB 865, § 7; Laws 2002, LB 112, § 1.

Reimbursement for expense of returning escapee is not a proper matter to be raised in appeal from criminal conviction and sentence. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

Evidence held insufficient to show denial of property rights afforded under sections 83-182 and 83-183. *Journey v. Vitek*, 685 F.2d 239 (8th Cir. 1982).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

### **83-183.01 Persons committed; wages; disposition; director; adopt rules and regulations.**

A person committed to the department, who is earning at least minimum wage and is employed pursuant to sections 81-1827 and 83-183, shall have his or her wages set aside by the chief executive officer of the facility in a separate wage fund. The director shall adopt and promulgate rules and regulations which will protect the inmate's rights to due process, provide for hearing as necessary before the Crime Victim's Reparations Committee, and govern the disposition of a confined person's gross monthly wage minus required payroll deductions and payment of necessary work-related incidental expenses for the following purposes:

(1) For the support of families and dependent relatives of the respective inmates;

(2) For the discharge of any legal obligations, including judgments for restitution;

(3) To pay all or a part of the cost of their board, room, clothing, medical, dental, and other correctional services;

(4) To provide for funds payable to the person committed to the department upon his or her release;

(5) For the actual value of state property intentionally or willfully and wantonly destroyed by such person during his or her commitment;

(6) For reasonable costs incurred in returning such person to the facility to which he or she is committed in the event of escape; and

(7) For deposit in the Victim's Compensation Fund.

**Source:** Laws 1980, LB 319, § 11; Laws 1986, LB 540, § 40; Laws 1987, LB 353, § 3.

**83-184 Person committed; visit outside facility; work at paid employment; funds; disposal; violations; effect.**

(1) When the conduct, behavior, mental attitude, and conditions indicate that a person committed to the department and the general society of the state will be benefited, and there is reason to believe that the best interests of the people of the state and the person committed to the department will be served thereby, in that order, and upon the recommendation of the Board of Parole in the case of each committed offender, the Director of Correctional Services may authorize such person, under prescribed conditions, to:

(a) Visit a specifically designated place or places and return to the same or another facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services, the contacting of prospective employers, or for any other reason consistent with the public interest; or

(b) Work at paid employment or participate in a training program in the community on a voluntary basis whenever:

(i) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(ii) The rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

(2) The wages earned by a person authorized to work at paid employment in the community under the provisions of this section shall be credited by the chief executive officer of the facility to such person's wage fund.

(3) A person authorized to work at paid employment in the community under the provisions of this section may be required to pay, and the Director of Correctional Services is authorized to collect, such costs incident to the person's confinement as the Director of Correctional Services deems appropriate and reasonable. Collections shall be deposited in the state treasury as miscellaneous receipts.

(4) The willful failure of a person to remain within the extended limits of his or her confinement or to return within the time prescribed to a facility designated by the Director of Correctional Services may be deemed an escape from custody punishable as provided in section 28-912.

(5) No person employed in the community under the provisions of this section or otherwise released shall, while working in such employment in the community or going to or from such employment or during the time of such release, be deemed to be an agent, employee, or servant of the state.

**Source:** Laws 1969, c. 817, § 15, p. 3081; Laws 1978, LB 748, § 46; Laws 1999, LB 106, § 1.

The word willful herein means only intentional and not accidental or involuntary. *State v. Gascoigen*, 191 Neb. 15, 213 N.W.2d 452 (1973).

Failure to return to a hospital after a temporary leave constitutes an escape from custody. *State v. Mayes*, 190 Neb. 837, 212 N.W.2d 623 (1973).

Sentence of one year for willful failure to return to Nebraska Penal and Correctional Complex from twenty-seven-hour fur-

lough was not excessive. *State v. Cox*, 189 Neb. 821, 205 N.W.2d 546 (1973).

The Director of Corrections may refuse to release a prisoner for work under this section notwithstanding a favorable recommendation by the Board of Parole. *Housand v. Sigler*, 186 Neb. 414, 183 N.W.2d 493 (1971).

### **83-185 Transferred to section 83-4,114.01.**

### **83-186 Visitors of facilities; enumerated.**

(1) The following persons shall be allowed to visit any facility in the Department of Correctional Services at any time:

- (a) Members of the Legislature;
- (b) Members of the judiciary;
- (c) Members of the Board of Pardons;
- (d) Members of the Board of Parole; and
- (e) Members of the clergy, subject to the approval of the Director of Correctional Services.

(2) The chief executive officer of a facility may permit any other person to visit the facility.

**Source:** Laws 1969, c. 817, § 17, p. 3083; Laws 1973, LB 563, § 43; Laws 1990, LB 1067, § 1.

### **83-187 Release of person committed; procedures.**

(1) When a person committed to the department is released from a facility, either on parole or upon final discharge, the person shall be returned any personal possessions taken upon confinement, and the chief executive officer of the facility shall furnish the person with a written notice as required in section 83-1,118, clothing appropriate for the season of the year, a transportation ticket to the place where he or she will reside, if within the continental limits of the United States or if not, the state may purchase transportation to the nearest United States border en route to such residence, and such sum of money as may be prescribed by the regulations of the department to enable the person to meet his or her immediate needs. If at the time of release the person is too ill or feeble or otherwise unable to use public means of transportation, the chief executive officer may make special arrangements for transportation to the place where the person will reside.

(2) At the time of release, the person shall also be paid his or her earnings and any accrued interest thereon set aside in the wage fund. Such earnings and interest shall be paid either in a lump sum or otherwise as determined by the chief executive officer to be in the best interest of the person. No less than one-third of such fund shall be paid upon release, and the entire fund shall be paid within six months of the person's release.

(3) The department shall send a copy of the release or discharge to the court which committed the person and also to the sheriff of the county in which the court is located and, when such county contains a city of the metropolitan class, to the police department of such city.

**Source:** Laws 1969, c. 817, § 18, p. 3083; Laws 1971, LB 48, § 1; Laws 1972, LB 1499, § 2; Laws 2002, LB 1054, § 27.

**83-187.01 Legislative intent.**

The Legislature affirms the importance of parole as a program for the supervised release of inmates making the transition from confinement to responsible citizenship. Therefor the Legislature intends that committed offenders who are eligible for parole have the opportunity to complete the final stages of their sentences on parole.

**Source:** Laws 2003, LB 46, § 18.

**83-188 Board of Parole; created; act, how construed.**

There is hereby created the Board of Parole. For administrative purposes only, the board shall be within the Board of Pardons. Nothing in the Nebraska Treatment and Corrections Act shall be construed to give the director or the Board of Pardons any authority, power, or responsibility over the Board of Parole, its employees, or the exercise of its functions under the provisions of the act. The employees of the Board of Parole shall be covered by the State Personnel System.

**Source:** Laws 1969, c. 817, § 19, p. 3084; Laws 1972, LB 1499, § 3; Laws 1973, LB 563, § 44; Laws 1992, Third Spec. Sess., LB 13, § 1; Laws 1993, LB 677, § 2; Laws 1994, LB 677, § 2.

## Cross References

State Personnel System, see section 81-1301 et seq.

**83-189 Board of Parole; members; appointment; qualifications; chairperson; duties.**

The Board of Parole shall consist of five full-time members to be appointed by the Governor. The members of the board shall be of good character and judicious temperament. The members of the board shall have all the powers and duties of board members commencing on the date of appointment. The appointments shall be subject to confirmation by the Legislature at its next regular session following the appointments. At least one member of the board shall be of an ethnic minority group, at least one member shall be female, and at least one member shall have a professional background in corrections.

One of the five members of the board shall be designated as chairperson by the Governor. In addition to the chairperson's duties as a member of the board as prescribed in subsection (1) of section 83-192, he or she shall supervise the administration and operation of the board and shall carry out the duties prescribed in subsection (2) of such section.

**Source:** Laws 1969, c. 817, § 20, p. 3084; Laws 1973, LB 524, § 1; Laws 1987, LB 603, § 1; Laws 1994, LB 677, § 3.

**83-190 Board of Parole; members; terms; removal; procedure.**

The members of the Board of Parole shall have terms of office of six years and until their successors are appointed. The successors shall be appointed in the same manner as provided for the members first appointed, and a vacancy occurring before expiration of a term of office shall be similarly filled for the unexpired term. A member of the board may be reappointed. The members of the board may be removed only for disability, neglect of duty, or malfeasance in office by the Board of Pardons after a hearing. The Board of Pardons shall

promptly file in the office of the Secretary of State a complete statement of the charges, its findings and disposition, and a complete record of the proceedings.

**Source:** Laws 1969, c. 817, § 21, p. 3084; Laws 1973, LB 524, § 2; Laws 1987, LB 603, § 2; Laws 1994, LB 677, § 4.

**83-191 Board of Parole; members; restriction on activities; salary.**

The members of the Board of Parole shall devote full time to their duties with such board and shall not engage in any other business or profession or hold any other public office. No member shall, at the time of his or her appointment or during his or her tenure, serve as the representative of any political party or of any executive committee or governing body thereof or as an executive officer or employee of any political party, organization, association, or committee. A member shall resign from the board upon filing as a candidate for any elective public office. Each member of the board shall receive an annual salary to be fixed by the Governor. On and after July 1, 1993, such salaries shall be paid in equal monthly portions.

**Source:** Laws 1969, c. 817, § 22, p. 3085; Laws 1973, LB 524, § 3; Laws 1987, LB 603, § 3; Laws 1992, Third Spec. Sess., LB 13, § 2; Laws 1994, LB 677, § 5.

**83-192 Board of Parole; chairperson; powers; duties.**

(1) The Board of Parole shall:

(a) Determine the time of release on parole of committed offenders eligible for such release;

(b) Fix the conditions of parole, revoke parole, issue or authorize the issuance of warrants for the arrest of parole violators, and impose other sanctions short of revocation for violation of conditions of parole;

(c) Determine the time of discharge from parole;

(d) Visit and inspect any facility, state or local, for the detention of persons charged with or convicted of an offense and for the safekeeping of such other persons as may be remanded to such facility in accordance with law;

(e) Within two years after July 1, 2006, implement the utilization of a validated risk and needs assessment in coordination with the Department of Correctional Services and the Office of Parole Administration. The assessment shall be prepared and completed by the department or the office for use by the board in determining release on parole;

(f) Review the record of every committed offender as follows:

(i) If a committed offender has a parole eligibility date within five years of his or her date of incarceration, his or her record shall be reviewed annually;

(ii) If a committed offender has a parole eligibility date which is more than five but not more than ten years from his or her date of incarceration, his or her record shall be reviewed during the first year of incarceration, and when he or she is within three years of his or her earliest parole eligibility date, his or her record shall be reviewed annually;

(iii) If a committed offender has a parole eligibility date which is more than ten but not more than thirty years from his or her date of incarceration, his or her record shall be reviewed during the first year of incarceration, every five

years thereafter until he or she is within five years of his or her earliest parole eligibility date, and annually thereafter;

(iv) If a committed offender has a parole eligibility date which is more than thirty years from his or her date of incarceration, his or her record shall be reviewed during his or her first, tenth, and twentieth year of incarceration, and when he or she is within five years of his or her earliest parole eligibility date, his or her record shall be reviewed annually; and

(v) If a committed offender is serving a minimum life sentence, his or her record shall be reviewed during the first year of incarceration and every ten years thereafter until such time as the sentence is commuted. If such sentence is commuted, the committed offender's record shall be reviewed annually when he or she is within five years of his or her earliest parole eligibility date.

Such review shall include the circumstances of the offense, the presentence investigation report, the committed offender's previous social history and criminal record, his or her conduct, employment, and attitude during commitment, and the reports of such physical and mental examinations as have been made. The board shall meet with such committed offender and counsel him or her concerning his or her progress and prospects for future parole.

The review schedule shall be based on court-imposed sentences or statutory minimum sentences, whichever are greater. Nothing in such schedule shall prohibit the board from reviewing a committed offender's case at any time;

(g) Appoint and remove all employees of the board as prescribed by the State Personnel System and delegate appropriate powers and duties to them; and

(h) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities of the board under the Nebraska Treatment and Corrections Act.

(2) The chairperson of the board shall:

(a) Supervise the administration and operation of the board;

(b) Serve in an advisory capacity to the director in administering parole services within any facility and in the community;

(c) Interpret the parole program to the public with a view toward developing a broad base of public support;

(d) Conduct research for the purpose of evaluating and improving the effectiveness of the parole system;

(e) Recommend parole legislation to the Governor;

(f) Adopt and promulgate rules and regulations for the administration and operation of the board; and

(g) Exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(3) The provisions of this section shall not prohibit a committed offender from requesting that the board review his or her record, except that the board shall not be required to review a committed offender's record more than once a year.

**Source:** Laws 1969, c. 817, § 23, p. 3085; Laws 1979, LB 322, § 65; Laws 1981, LB 545, § 43; Laws 1986, LB 1241, § 1; Laws 1992, Third Spec. Sess., LB 13, § 3; Laws 1994, LB 677, § 6; Laws 2006, LB 1113, § 50.

State Personnel System, see section 81-1301 et seq.

**83-193 Board of Parole; no jurisdiction over person neglected, dependent, delinquent, or in need of special supervision.**

The Board of Parole shall not have jurisdiction over persons who are committed to the Department of Correctional Services after being found neglected, dependent, delinquent or in need of special supervision in accordance with the provisions of Chapter 43, article 2.

**Source:** Laws 1969, c. 817, § 24, p. 3086.

**83-194 Board of Parole; advise Board of Pardons upon request.**

The Board of Parole shall, when requested by the Board of Pardons, advise it concerning applications requesting the exercise of pardon authority and shall make such investigation and collect such records as may bear on such applications.

**Source:** Laws 1969, c. 817, § 25, p. 3086.

**83-195 Board of Parole; issue process; service; compel attendance of witnesses; fees.**

In the performance of its duties, the Board of Parole, or any member thereof, shall have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of an inquiry, and to administer oaths and take the testimony of persons under oath. Subpoenas so issued may be served by any sheriff, constable, police officer, parole officer, or peace officer in the same manner as similar process in the district court. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before the district court is subject. Any district court of this state, upon application by the board, may compel the attendance of such witnesses, the production of such material, and the giving of testimony before the board by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such court. Every person shall attend as a witness when subpoenaed anywhere within the state and shall be entitled to the same fees, if requested, as a witness in the district court and mileage as provided in section 81-1176 for state employees. Fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses shall be paid by the board.

**Source:** Laws 1969, c. 817, § 26, p. 3087; Laws 1981, LB 204, § 202; Laws 1988, LB 864, § 64.

**83-196 Board of Parole; quorum; decisions; record.**

Three members of the Board of Parole shall constitute a quorum for the purpose of transacting any official business. The decisions of the Board of Parole shall be by majority vote. The board shall keep a record of its acts and shall notify the Director of Correctional Services of its decisions relating to offenders who are or have been committed.

**Source:** Laws 1969, c. 817, § 27, p. 3087; Laws 1987, LB 603, § 4.

**83-197 Department of Correctional Services; records to be kept.**

The Board of Parole shall have the power to direct the Director of Correctional Services to keep records concerning committed offenders which the board deems pertinent to its functions.

**Source:** Laws 1969, c. 817, § 28, p. 3087.

**83-198 Prohibited acts; violation; penalty.**

A person shall be guilty of a felony if he threatens or attempts to threaten harm to a member of the Board of Parole with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as member of the board or if he privately addresses to any member of the board any representation, entreaty, argument or other communication designed to influence the outcome of any matter which is or may come before the board on the basis of considerations other than those authorized by law, and shall be guilty of a Class IV felony.

**Source:** Laws 1969, c. 817, § 29, p. 3087; Laws 1977, LB 39, § 310.

**83-199 Board of Parole; provision of law not applicable.**

The provisions of the Administrative Procedure Act shall not apply to the Board of Parole or to the exercise of its functions.

**Source:** Laws 1969, c. 817, § 30, p. 3088.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**83-1,100 Office of Parole Administration; created; duties.**

There is hereby created within the department the Office of Parole Administration. The office shall consist of the Parole Administrator, the field parole service, and all other office staff. The office shall be responsible for the following:

- (1) The administration of parole services in the community;
- (2) The maintenance of all records and files associated with the Board of Parole;
- (3) The daily supervision and training of staff members of the office; and
- (4) The assessment, evaluation, and supervision of individuals who are subject to lifetime community supervision pursuant to section 83-174.03.

Nothing in this section shall be construed to prohibit the office from maintaining daily records and files associated with the Board of Pardons.

**Source:** Laws 1969, c. 817, § 31, p. 3088; Laws 1992, Third Spec. Sess., LB 13, § 4; Laws 1994, LB 677, § 7; Laws 2006, LB 1199, § 92.

**Cross References**

**Office of Parole Administration**, contained in Department of Correctional Services, Division of Community-Centered Services, see section 83-933.

**83-1,100.01 Transfer of property to Board of Pardons and Board of Parole.**

All equipment, books, and other property in the possession of the Office of Parole Administration relating to the functions of the Board of Pardons and the Board of Parole, except records maintained by the Secretary of State, on July 1,

1994, are hereby transferred to the Board of Pardons and the Board of Parole, as appropriate, as of such date.

**Source:** Laws 1992, Third Spec. Sess., LB 13, § 7; Laws 1994, LB 677, § 8.

**83-1,101 Parole Administrator; appointment; qualifications.**

The Director of Correctional Services with the consent of the Board of Parole shall appoint a Parole Administrator, who shall be a person with appropriate experience in the field of corrections, or with training in relevant disciplines at a recognized university.

**Source:** Laws 1969, c. 817, § 32, p. 3088; Laws 1972, LB 1499, § 4.

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. State v. Houston, 196 Neb. 724, 246 N.W.2d 63 (1976).

**83-1,102 Parole Administrator; duties.**

The Parole Administrator shall:

- (1) Supervise and administer the Office of Parole Administration;
- (2) Establish and maintain policies, standards, and procedures for the field parole service and the community supervision of sex offenders pursuant to section 83-174.03;
- (3) Divide the state into parole districts and appoint district parole officers, deputy parole officers, if required, and such other employees as may be required to carry out adequate parole supervision of all parolees, adequate probation supervision of probationers as ordered by district judges, prescribe their powers and duties, and obtain office quarters for staff in each district as may be necessary;
- (4) Cooperate with the Board of Parole, the courts, the Community Corrections Council, and all other agencies, public and private, which are concerned with the treatment or welfare of persons on parole;
- (5) Provide the Board of Parole and district judges with any record of a parolee or probationer which it may require;
- (6) Make recommendations to the Board of Parole or district judge in cases of violation of the conditions of parole or probation, issue warrants for the arrest of parole or probation violators when so instructed by the board or district judge, notify the Director of Correctional Services of determinations made by the board, and upon instruction of the board, issue certificates of parole and of parole revocation to the facilities and certificates of discharge from parole to parolees;
- (7) Organize and conduct training programs for the district parole officers and other employees;
- (8) In consultation with the Community Corrections Council, use the funds provided under section 83-1,107.02 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a parolee's

vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(9) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated; and

(10) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 817, § 33, p. 3088; Laws 1971, LB 680, § 28; Laws 2003, LB 46, § 19; Laws 2005, LB 538, § 23; Laws 2006, LB 1199, § 93.

**Cross References**

Definitions applicable, see section 29-2246.

**83-1,103 Field parole service; duties.**

The field parole service, consisting of district parole officers and deputy parole officers working under the direction of the Parole Administrator or district judge, shall be responsible for the investigation, supervision, and assistance of parolees, probationers, or individuals subject to community supervision under section 83-174.03. The field parole service shall be sufficient in size to assure that no district parole officer carries a case load larger than is compatible with adequate parole investigation or supervision.

**Source:** Laws 1969, c. 817, § 34, p. 3089; Laws 1971, LB 680, § 29; Laws 2006, LB 1199, § 94.

**Cross References**

Definitions applicable, see section 29-2246.

**83-1,103.01 Lifetime community supervision; parole officer; duties.**

A parole officer assigned by the administrator to supervise individuals subject to lifetime community supervision pursuant to section 83-174.03 shall:

(1) Make investigations, prior to an individual subject to community supervision being released from incarceration, in cooperation with institutional case-workers at prisons, mental health facilities, and county jails, to determine the community supervision conditions necessary to protect the public and make reasonable advance preparation for release into the community;

(2) Assist individuals subject to community supervision to comply with the conditions of supervision and to make a successful adjustment in the community;

(3) Supervise individuals subject to community supervision by keeping informed of their conduct and condition;

(4) Make reports as required by the administrator to determine the effectiveness of community supervision in protecting the public or the progress of an individual subject to community supervision;

(5) Cooperate with social welfare agencies and treatment providers to ensure that individuals subject to community supervision receive any necessary services or treatment;

(6) Inform the administrator when, in the opinion of the community supervision officer, an individual is in violation of the conditions of his or her community supervision, and whenever necessary exercise the power of arrest as provided in section 83-1,102;

(7) Conduct periodic reviews of the conditions of community supervision imposed on an individual as required by the administrator; and

(8) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 2006, LB 1199, § 95.

**83-1,103.02 Lifetime community supervision; Office of Parole Administration; duties; certificate of community supervision; appeal.**

(1) Prior to the release from incarceration of an individual subject to lifetime community supervision pursuant to section 83-174.03, the Office of Parole Administration shall:

(a) Notify the individual in writing that he or she is subject to community supervision upon completion of his or her criminal sentence;

(b) Inform the individual subject to community supervision of the process by which conditions of community supervision are determined and his or her right to submit relevant information to the office for consideration when establishing the conditions of supervision;

(c) Determine the individual's risk of recidivism if released into the community, utilizing a validated risk assessment tool;

(d) After considering the information required in subdivision (e) of this subsection, determine the conditions of supervision which will most effectively minimize the risk of the individual committing another sex offense. The conditions shall be the least restrictive conditions available, in terms of the effect on the individual's personal freedom, which minimize the risk of recidivism and are compatible with public safety; and

(e) In determining the conditions of supervision to be imposed, the office shall consider the following:

(i) A report prepared by the institutional caseworkers relating to the individual's personality, social history, and adjustment to authority and including any recommendations which the staff of the facility may make;

(ii) All official reports of the individual's prior criminal record, including reports and records of earlier probation and parole experiences;

(iii) The presentence investigation report;

(iv) The reports of any physical, mental, and psychiatric examinations of the individual;

(v) Any relevant information which may be submitted by the individual, his or her attorney, the victim of the crime, or other persons; and

(vi) Such other relevant information concerning the individual as may be reasonably available.

(2) Upon completion of the risk assessment and the determination of the conditions of community supervision and no later than thirty days prior to the completion of the individual's criminal sentence, the Office of Parole Administration shall issue a certificate of community supervision to the individual containing the conditions of community supervision he or she will be required to comply with upon the completion of his or her criminal sentence. The

administrator shall include with the certificate written information on how to appeal the determination of the conditions of community supervision.

**Source:** Laws 2006, LB 1199, § 96.

**83-1,103.03 Lifetime community supervision; Office of Parole Administration; annual review.**

The Office of Parole Administration shall review the conditions of community supervision imposed on an individual pursuant to section 83-174.03 on an annual basis and shall provide the individual the opportunity to submit written materials to the office for consideration during such review.

If the office determines, after reviewing the individual's conduct while under supervision and any other relevant facts, that one or more of the conditions of community supervision imposed upon the individual is no longer necessary to reduce the risk of the individual reoffending or is no longer the least restrictive condition compatible with public safety, the office shall revise the conditions of community supervision so that the individual's freedom is not unnecessarily restricted.

**Source:** Laws 2006, LB 1199, § 97.

**83-1,103.04 Lifetime community supervision; determination or revision of conditions; appeal; burden of proof.**

(1) Whenever a determination or revision of the conditions of community supervision is made by the Office of Parole Administration, the individual subject to the conditions shall be entitled to an appeal. The appeal shall be heard by the district court in the county where the individual resides. The individual shall be informed of his or her right to request counsel, and if counsel is requested the court shall determine if the individual is indigent. If the court finds the individual to be indigent, it shall appoint counsel from the public defender's office to represent the individual during the appeal.

(2) In an appeal contesting the determination or revision of the conditions of community supervision, the burden of proof shall be on the individual subject to community supervision to show by clear and convincing evidence (a) that the conditions in question will not reduce the risk of the individual reoffending or otherwise protect the public or (b) that the condition is overly restrictive of the individual's freedom and a less restrictive condition is available which is equally or more effective in reducing the risk of the individual reoffending.

**Source:** Laws 2006, LB 1199, § 98.

**83-1,104 District parole officer; duties.**

A district parole officer shall:

(1) Make investigations, prior to a committed offender's release on parole, in cooperation with institutional caseworkers and the Board of Parole to determine the adequacy of parole plans and make reasonable advance preparation for release on parole;

(2) Assist parolees or probationers to comply with the conditions of parole or probation and to make a successful adjustment in the community;

(3) Supervise parolees or probationers by keeping informed of their conduct and condition;

(4) Make such reports as required by the Parole Administrator or district judge to determine the effectiveness of the parole system or the progress of an individual parolee or probationer;

(5) Cooperate with social welfare agencies;

(6) Observe the work of any deputy parole officer under his supervision from time to time;

(7) Inform the Parole Administrator when, in his opinion, any eligible parolee's conduct and attitude warrant his discharge from supervision, or when any parolee's or probationer's violation of the conditions of parole or probation is of sufficient seriousness to require action by the Board of Parole or district judge and whenever necessary exercise the power of arrest as provided in section 83-1,119;

(8) Delegate in his discretion any of the above responsibilities to a deputy parole officer if provided for his district; and

(9) Exercise all powers and perform all duties necessary and proper in carrying out his responsibilities.

**Source:** Laws 1969, c. 817, § 35, p. 3089; Laws 1971, LB 680, § 30.

**Cross References**

Definitions applicable, see section 29-2246.

**83-1,105 Repealed. Laws 1993, LB 529, § 2.**

**83-1,105.01 Indeterminate sentence; court; duties; study of offender; when; costs.**

Except when a term of life imprisonment without parole is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(1) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law;

(2) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law; or

(3)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the

court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with any applicable provision of law. The term of the sentence shall run from the date of original commitment under this subdivision.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the offender is held in a state institution under this subdivision shall be the responsibility of the state and the county shall be liable only for the cost of delivering the offender to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

**Source:** Laws 1997, LB 364, § 20; Laws 2002, Third Spec. Sess., LB 1, § 17.

By their terms, this section and section 29-2204 govern indeterminate sentences, and they are inapplicable to a criminal defendant's determinate sentence. *State v. White*, 256 Neb. 536, 590 N.W.2d 863 (1999).

Where a criminal statute was amended by mitigating the minimum term of a Class IV felony indeterminate sentence after

the defendant committed the crime, but before final judgment was rendered on direct appeal, the punishment was that provided by the amendatory act, since the Legislature did not specifically state otherwise. *State v. Urbano*, 256 Neb. 194, 589 N.W.2d 144 (1999).

### **83-1,106 Maximum term; credit; how obtained.**

(1) Credit against the maximum term and any minimum term shall be given to an offender for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. This shall specifically include, but shall not be limited to, time spent in custody prior to trial, during trial, pending sentence, pending the resolution of an appeal, and prior to delivery of the offender to the custody of the Department of Correctional Services, the county board of corrections, or, in counties which do not have a county board of corrections, the county sheriff.

(2) Credit against the maximum term and any minimum term shall be given to an offender for time spent in custody under a prior sentence if he or she is later reprobated and resentenced for the same offense or for another offense based on the same conduct. In the case of such a reprobation, this shall include credit in accordance with subsection (1) of this section for time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same conduct.

(3) If an offender is serving consecutive or concurrent sentences, or both, and if one of the sentences is set aside as the result of a direct or collateral proceeding, credit against the maximum term and any minimum term of the remaining sentences shall be given for all time served since the commission of the offenses on which the sentences set aside were based.

(4) If the offender is arrested on one charge and prosecuted on another charge growing out of conduct which occurred prior to his or her arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution shall be given for all time spent in custody under the former charge which has not been credited against another sentence.

(5) Credit for time served shall only be given in accordance with the procedure specified in this subsection:

(a) Credit to an offender who is eligible therefor under subsections (1), (2), and (4) of this section shall be set forth as a part of the sentence; or

(b) Credit to an offender who is eligible therefor under subsection (3) of this section shall only be given by the court in which such sentence was set aside by entering such credit in the final order setting aside such sentence.

**Source:** Laws 1969, c. 817, § 37, p. 3091; Laws 1972, LB 1499, § 6; Laws 1988, LB 1054, § 1; Laws 1993, LB 113, § 4.

1. Credit against sentence
2. Discretion of court
3. Not retrospective
4. Miscellaneous

#### 1. Credit against sentence

Pursuant to subsection (1) of this section, a court must give credit for time served on a charge when a prison sentence is imposed for that charge. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

The import of subsection (4) of this section is that all credit available due to presentence incarceration shall be applied, but only once. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

When concurrent sentences are imposed, the credit is applied once, and the credit applied once, in effect, is applied against each concurrent sentence, because the longest sentence determines the offender's actual length of time in prison. *State v. Banes*, 268 Neb. 805, 688 N.W.2d 594 (2004).

A defendant is provided credit for jail time which is time he or she spends in detention pending trial and sentencing. *State v. Baker*, 250 Neb. 896, 553 N.W.2d 464 (1996).

Subsection (1) of this section requires that a defendant receive credit for time served pending the resolution of an appeal. *State v. Marks*, 248 Neb. 592, 537 N.W.2d 339 (1995).

On being sentenced for life imprisonment upon conviction of first degree murder, defendant is not entitled to credit for time in custodial detention pending trial and sentence. *State v. Masters*, 246 Neb. 1018, 524 N.W.2d 342 (1994).

In a criminal case, a judge in sentencing is required to separately determine, state, and grant the amount of credit on defendant's sentence to which defendant is entitled under subsection (1) of this section. *State v. Esquivel*, 244 Neb. 308, 505 N.W.2d 736 (1993).

For purposes of subsection (1) of this section, "in custody" means judicially imposed physical confinement in a government facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. The "in-custody" credit against a sentence eventually imposed on a defendant ensures that the defendant is not incarcerated longer than the maximum period of incarceration statutorily prescribed as punishment for a particular offense. *State v. Jordan*, 240 Neb. 919, 485 N.W.2d 198 (1992).

Home detention on probation, subject to electronic monitoring, is insufficiently restrictive to constitute "custody" under subsection (1) of this section. *State v. Muratella*, 240 Neb. 567, 483 N.W.2d 128 (1992).

Overruling the holding in *State v. Von Busch*, 234 Neb. 119, 449 N.W.2d 237 (1989), which gave credit upon sentencing for "any previously served jail time," subsection (1) of this section refers only to any jail time served on the charges for which sentences were imposed. *State v. Heckman*, 239 Neb. 25, 473 N.W.2d 416 (1991).

When a defendant is sentenced to an indefinite term up to the maximum prison term possible, credit must be given for any previously served jail time. *State v. Von Busch*, 234 Neb. 119, 449 N.W.2d 237 (1989).

One sentenced to life imprisonment is not entitled to credit for time in custodial detention pending disposition of the proceed-

ings on the charge levied. *State v. Lynch*, 215 Neb. 528, 340 N.W.2d 128 (1983).

There is no requirement in this section that a defendant be awarded credit against a sentence for time spent in a mental institution. *State v. Prosser*, 209 Neb. 766, 311 N.W.2d 525 (1981).

Authority to give credit for time served in custody lies with district court under this section. Under section in effect in 1970, only Director of Corrections had authority to allow credit for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. *State v. Al-Hafeez*, 208 Neb. 681, 305 N.W.2d 379 (1981).

This section held constitutional and sentence affirmed where defendant's time in custody prior to sentence was considered by court at sentencing. *Eutzy v. State*, 199 Neb. 384, 258 N.W.2d 829 (1977).

Where on motion for credit for prior jail time, sentencing judge found he had considered prior jail time, constitutional guarantees of due process and equal protection were not violated although the record at sentencing is silent on the subject. *State v. Nelson*, 189 Neb. 580, 203 N.W.2d 785 (1973).

Credit for time served must be given against the minimum and maximum terms of a sentence. Credit for presentence incarceration is properly granted only against the aggregate of all terms imposed. *State v. Sanchez*, 2 Neb. App. 1008, 520 N.W.2d 33 (1994).

#### 2. Discretion of court

The crediting of prior jail time to a sentence imposed as the minimum permitted by statute is discretionary with the sentencing judge. *Addison v. Parratt*, 208 Neb. 459, 303 N.W.2d 785 (1981).

A trial court may order that sentences be served consecutively, and has broad discretion in determining amount of credit for jail time. *State v. Tweedy*, 196 Neb. 251, 242 N.W.2d 629 (1976); *State v. Tweedy*, 196 Neb. 248, 242 N.W.2d 627 (1976).

A trial court has broad discretion in determining the amount of credit to be allowed defendant for time spent in jail. *State v. Tweedy*, 196 Neb. 246, 242 N.W.2d 626 (1976).

#### 3. Not retrospective

This section does not apply retrospectively. *State v. Keever*, 234 Neb. 289, 450 N.W.2d 682 (1990).

This section is not retrospective. *Housand v. Sigler*, 186 Neb. 414, 183 N.W.2d 493 (1971).

#### 4. Miscellaneous

Jail time is commonly understood to be the time an accused spends in detention pending trial and sentencing. *State v. Fisher*, 218 Neb. 479, 356 N.W.2d 880 (1984).

This section does not prohibit a second trial for offenses arising out of the same conduct, nor does it specifically indicate any direct federal-state application. *State v. Pope*, 190 Neb. 689, 211 N.W.2d 923 (1973).

**83-1,107 Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration.**

(1)(a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be fully explained to the committed offender. The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education, including teaching such classes by qualified offenders;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs; and
- (v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. The department may not impose disciplinary action upon any committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

(2) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

The total reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subsection (2) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been notified regarding the charges of misconduct.

(4) The department shall make treatment programming available to committed offenders as provided in section 83-1,110.01 and shall include continuing participation in such programming as part of each offender's parolee personalized program plan.

(5)(a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a parolee personalized program plan document shall be drawn up and approved by the Office of Parole Administration. The document shall specifically describe the

approved personalized program plan and the specific goals the office expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved personalized program plan. The approved personalized program plan shall be fully explained to the parolee. During the term of parole, the parolee shall comply with the approved personalized program plan and the office shall provide programs to allow compliance by the parolee with the approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs;
- (v) Community service programs; and
- (vi) Any other program deemed necessary and appropriate by the office.

(b) A modification in the approved personalized program plan may be made to account for the increased or decreased abilities of the parolee or the availability of any program. Any modification shall be made only after notice is given to the parolee. Intentional failure to comply with the approved personalized program plan by any parolee as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the office resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(6) While the offender is in the custody of the board, reductions of terms granted pursuant to subsection (2) of this section may be forfeited, withheld, and restored by the administrator with the approval of the director after the offender has been notified regarding the charges of misconduct or breach of the conditions of parole. In addition, the board may recommend such forfeitures of good time to the director.

(7) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

**Source:** Laws 1969, c. 817, § 38, p. 3092; Laws 1972, LB 1499, § 7; Laws 1975, LB 567, § 2; Laws 1992, LB 816, § 2; Laws 1995, LB 371, § 20; Laws 1997, LB 364, § 19; Laws 2003, LB 46, § 20.

- 1. Reduction of term
- 2. Good-time credit forfeited
- 3. Applicability of section
- 4. Miscellaneous

**1. Reduction of term**

Under former law, the director and chief executive officer of a correctional facility have the authority to delegate to subordinate officials the duty to approve the forfeiture of reductions of terms granted pursuant to subsection (2) of this section. *Martin v. Dept. of Corr. Servs.*, 267 Neb. 33, 671 N.W.2d 613 (2003).

When an indeterminate sentence is imposed, a prisoner's earliest parole eligibility date is determined by crediting good behavior time on the basis of his minimum, not his maximum, term. *Ebert v. Black*, 216 Neb. 814, 346 N.W.2d 254 (1984).

The good time reductions provided in this section are used to determine eligibility for release on parole or supervision and are subject to forfeiture. *Wycoff v. Vitek*, 201 Neb. 62, 266 N.W.2d 211 (1978); *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735 (1971).

**2. Good-time credit forfeited**

Pursuant to the Nebraska Treatment and Corrections Act, there may be a forfeiture of credit for meritorious behavior earned before release on mandatory parole. *Nichols v. Gunter*, 225 Neb. 638, 407 N.W.2d 203 (1987); *Anderson v. Gunter*, 225 Neb. 637, 407 N.W.2d 202 (1987); *Wounded Shield v. Gunter*, 225 Neb. 327, 405 N.W.2d 9 (1987).

Neither mandatory good time earned pursuant to this section nor meritorious good time earned pursuant to section 83-1,107.01 is automatically forfeited upon revocation of parole. Such forfeiture must occur upon recommendation of the chief executive officer of the facility to which the offender is entrusted or the parole administrator, depending upon who has custody at the time of revocation, subject to approval of the director of the Department of Correctional Services. Once forfeited or withheld, good time credits may be restored to the offender in like manner. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Pursuant to this section and section 83-1,107.01, the Board of Parole merely has the right to make recommendation of forfeitures of good time when the offender is in the custody of the Board of Parole. The discretion referred to by statute vests solely in the chief executive officer of the facility when the offender is in the custody of the Department of Correctional Services and in the parole administrator when the offender is in the custody of the Board of Parole, in each instance subject to the approval of the director of the Department of Correctional Services. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Fighting and threatening an officer's life would amount to flagrant or serious misconduct for which statutory good time may be withheld. Certain activities which would not, or which are best left to judgment of adjustment committee, are outlined. *McDonnell v. Wolff*, 342 F.Supp. 616 (D. Neb. 1972).

### 3. Applicability of section

"New good time law" inapplicable to those offenders who started serving sentences before the effective date of July 15, 1992, absent approval of the Board of Pardons, even if the offender is resentenced pursuant to the new Convicted Sex Offender Act, also effective July 15, 1992. *Duff v. Clarke*, 247 Neb. 345, 526 N.W.2d 664 (1995).

This section governs an offender's good time computation even though offender was sentenced before this section changed, effective July 15, 1992, because the offender's judgment was not final until after appeal. *State v. Schrein*, 247 Neb. 256, 526 N.W.2d 420 (1995).

The good time provisions of LB 567 are not to be retroactively applied to those who were initially incarcerated prior to its effective date, regardless of whether the incarceration is on a consolidated sentence made up of crimes committed both before and after LB 567's effective date, without Board of Pardons approval. *Boston v. Black*, 215 Neb. 701, 340 N.W.2d 401 (1983).

This section through section 83-1,111 applies retroactively to prisoners only with approval of the Board of Pardons. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

This section governs eligibility for parole or release under supervision rather than for absolute discharge as under previous statutes. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267 (1971).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

### 4. Miscellaneous

Good time credit under subsection (1) of this section does not apply to mandatory minimum sentences imposed on habitual criminals pursuant to subsection (1) of section 29-2221. *Johnson v. Kenney*, 265 Neb. 47, 654 N.W.2d 191 (2002).

Pursuant to subsection (1)(b) of this section, an inmate who has been given proper notice that certain conduct could result in disciplinary segregation and that disciplinary segregation could prevent the inmate from participation in the program plan can be found to have intentionally violated the program plan. *Ponce v. Nebraska Dept. of Corr. Servs.*, 263 Neb. 609, 641 N.W.2d 375 (2002).

Good time is figured under the statutory scheme in existence at the time the offender's sentence becomes final; therefore, if this section is amended while the offender's sentence is suspended pending direct appeal, the amended version of this section applies. *Jones v. Clarke*, 253 Neb. 161, 568 N.W.2d 897 (1997).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

The decision to impose discipline is discretionary with the chief executive officer of a penal facility and imposition of a greater penalty for infraction of a prison rule than would have been sustained by a citizen prosecuted in a court of law for a similar offense is neither an abuse of that discretion nor a violation of the U.S. Constitution. *Glouser v. Parratt*, 605 F.2d 419 (8th Cir. 1979).

## **83-1,107.01 Fees; waiver; when; failure to pay; effect.**

(1) Unless otherwise provided by this section, whenever an adult offender is paroled, the board shall require a parolee to pay a monthly parole programming fee.

(2) Parolees under the supervision of the Office of Parole Administration shall pay a monthly parole programming fee of twenty-five dollars, not later than the tenth day of each month, beginning the second month of parole supervision and continuing for the duration of the parole.

(3) The board shall waive payment of the monthly parole programming fee in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the parolee is unable to pay his or her monthly parole programming fee.

(4) When monthly parole programming fees are waived, in whole or in part, the parole officer, pursuant to rules and regulations adopted by the board, may

contract with the parolee to perform approved community service at the rate of five dollars per hour in lieu of payment of monthly parole programming fees. A parolee may be required to pay a participation fee in order to take advantage of community service programs. A parolee may not accumulate more than three months' advance credit for community service. The use of community service alternatives does not preclude the imposition of other intermediate measures.

(5) The Office of Parole Administration with the approval of the Board of Parole shall implement sanctions if a parolee defaults in the payment of monthly parole programming fees or any installment thereof as established by subsection (2) of this section, except that parole shall not be revoked nor shall the parolee be imprisoned for such nonpayment if the parolee is financially unable to make the payment.

(6) If the board determines that the default in payment described in subsection (5) of this section was not attributable to a deliberate refusal to obey the order of the board or to failure on the parolee's part to make a good faith effort to obtain the funds required for payment, the board may allow the parolee additional time for payment, reduce the amount of each installment, or revoke the fees or the unpaid portion in whole or in part.

(7) No parolee shall be required to pay more than one monthly parole programming fee per month.

(8) The imposition of monthly parole programming fees in this section shall be considered separate and apart from specific service delivery fees.

(9) Any adult offender received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed a monthly parole programming fee during the period of time the offender is actively supervised by Nebraska parole authorities.

(10) A parolee shall pay the fees described in this section to the Office of Parole Administration. The office shall remit all fees to the State Treasurer for credit to the Parole Program Cash Fund.

(11) The board and the office shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2003, LB 46, § 21.

**83-1,107.02 Parole Program Cash Fund; created; use; investment.**

The Parole Program Cash Fund is created. All funds collected pursuant to section 83-1,107.01 shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the Office of Parole Administration, in consultation with the Community Corrections Council, for the purposes stated in subdivision (8) of section 83-1,102. Any money in the 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.

**Source:** Laws 2003, LB 46, § 22.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**83-1,108 Board of Parole; reduction of sentence for good conduct; provisions; forfeiture.**

(1) The board shall reduce, for good conduct in conformity with the conditions of parole, a parolee's parole term by two days for each month of such term. The total of such reductions shall be deducted from the maximum term, less good time granted pursuant to section 83-1,107, to determine the date when discharge from parole becomes mandatory.

(2) Reductions of the parole terms may be forfeited, withheld, and restored by the board after the parolee has been consulted regarding any charge of misconduct or breach of the conditions of parole.

**Source:** Laws 1969, c. 817, § 39, p. 3092; Laws 1972, LB 1499, § 8; Laws 1975, LB 567, § 4; Laws 1992, LB 816, § 3.

Sen­ting judge's announce­ment he con­sid­ered pos­si­ble ef­fect of sta­tu­tes per­mit­ting pri­son au­thor­i­ties to ame­li­o­rate sen­ten­ces did not vi­o­late con­sti­tu­tional due pro­cess, and sen­ten­ces were not ex­ces­sive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

**83-1,109 Chief executive officer; good time; report; Director of Correctional Services; duties.**

The chief executive officer of a facility shall regularly report all good time and all forfeitures, withholdings, and restorations of good time to the director. On the basis of such report, the director shall inform the board and the administrator of all committed offenders who are expected to become eligible for release on parole within the next three months.

**Source:** Laws 1969, c. 817, § 40, p. 3093; Laws 1975, LB 567, § 5; Laws 1992, LB 816, § 4.

Sen­ting judge's announce­ment he con­sid­ered pos­si­ble ef­fect of sta­tu­tes per­mit­ting pri­son au­thor­i­ties to ame­li­o­rate sen­ten­ces did not vi­o­late con­sti­tu­tional due pro­cess, and sen­ten­ces were not ex­ces­sive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Pris­on­er's sta­tu­to­ry right to good time may not be taken away from him with­out fol­low­ing min­i­mum ap­pro­pri­ate due pro­cess pro­ce­du­res. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

**83-1,110 Committed offender; eligible for release on parole; when.**

(1) Every committed offender shall be eligible for parole when the offender has served one-half the minimum term of his or her sentence as provided in sections 83-1,107 and 83-1,108. The board shall conduct a parole review not later than sixty days prior to the date a committed offender becomes eligible for parole as provided in this subsection, except that if a committed offender is eligible for parole upon his or her commitment to the department, a parole review shall occur as early as is practical. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

(2) Every committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence, shall be eligible for release on parole when the offender has served the total of one-half the minimum term as provided in sections 83-1,107 and 83-1,108. The maximum terms shall be added to compute the new maximum term which, less good time, shall determine the date when discharge from the custody of the state becomes mandatory.

**Source:** Laws 1969, c. 817, § 41, p. 3093; Laws 1972, LB 1499, § 9; Laws 1975, LB 567, § 6; Laws 1992, LB 858, § 5; Laws 1992, LB 816, § 5; Laws 1995, LB 371, § 21; Laws 2003, LB 46, § 23.

1. Good time credit
2. Consolidation of consecutive sentences
3. Miscellaneous

**1. Good time credit**

For purposes of good time computation, an offender's sentence is the sum of all sentences he or she receives, regardless of whether additional sentences are imposed or whether the offender is resentenced under the new Convicted Sex Offender Act after the effective date of the new good time law, July 15, 1992. *Duff v. Clarke*, 247 Neb. 345, 526 N.W.2d 664 (1995).

A defendant sentenced as a habitual criminal to the mandatory 10-year sentence under section 29-2221 is not entitled to good time credit pursuant to this section on his or her mandatory minimum sentence. *Ebert v. Nebraska Dept. of Corr. Servs.*, 11 Neb. App. 553, 656 N.W.2d 634 (2003).

**2. Consolidation of consecutive sentences**

The date of an offender's initial incarceration is the date on which service of a consolidated sentence begins. *Stewart v. Clarke*, 240 Neb. 397, 482 N.W.2d 248 (1992).

Under the statutory structures of 1975 Neb. Laws, LB 567, and 1969 Neb. Laws, LB 1307, an offender's consecutive term imposed during incarceration is consolidated with the prisoner's previous sentence so that the minimum term of the consolidated sentence is the total or sum of the minimum terms of the subsequent offense and previous offense and the maximum term is the total or sum of the maximum terms of such subsequent offense and previous offense. The consolidated sentence commences at the date of the initial incarceration. Absent approval of the Board of Pardons, good time is computed under the statutory provisions in effect at the date of initial incarceration. *Luxford v. Benson*, 216 Neb. 115, 341 N.W.2d 925 (1983).

Laws 1975, L.B. 567, made no changes in the provisions for consolidation of consecutive sentences, and the pertinent provi-

sions of subsection (2) of this section are to be applied to consecutive sentences where one was imposed before and one after the effective date of L.B. 567. *Gochenour v. Bolin*, 208 Neb. 444, 303 N.W.2d 775 (1981).

**3. Miscellaneous**

The provisions of this section are to be applied to consecutive sentences whether imposed before or after the effective date of Laws 1975, LB 567. *Whited v. Bolin*, 210 Neb. 32, 312 N.W.2d 691 (1981).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

Sentences of one defendant modified to fit apparent purpose of making total less harsh than that of other defendant. *State v. Pope*, 192 Neb. 755, 224 N.W.2d 521 (1974).

Where life sentence with no minimum imposed for second degree murder, eligibility for parole same as though statutory minimum of ten years had been expressed. *State v. Thompson*, 189 Neb. 115, 201 N.W.2d 204 (1972).

One sentenced for a specific term is eligible for parole upon completion of his term less the reductions granted him. *State v. Rhodes*, 187 Neb. 332, 190 N.W.2d 623 (1971).

A committed offender is eligible for release on parole upon completion of his minimum term less reductions or upon completion of a minimum sentence provided by law less reductions if approved by the sentencing judge or his successor. *State v. McMillian*, 186 Neb. 784, 186 N.W.2d 481 (1971).

**83-1,110.01 Substance abuse therapy; department; duties; waiver of requirement by board; when.**

The department shall provide substance abuse therapy required by section 28-416 prior to the first parole eligibility date of the committed person. Based on the recommendations, if any, regarding psychological treatment of the committed person pursuant to section 83-179, the department shall provide the person with adequate access or availability to mental health therapy prior to the first parole eligibility date of the committed person. If the board finds that the department did not provide adequate access or availability to the committed person prior to the first parole eligibility date, the board may waive the requirement of section 28-416 only if, as a condition of parole, the committed person agrees to attend and complete therapy which is recommended by the board.

**Source:** Laws 1994, LB 677, § 17; R.S.1943, (1994), § 83-1,135.01; Laws 1997, LB 274, § 1.

**83-1,110.02 Medical parole; eligibility; conditions; term.**

(1) A committed offender who is otherwise eligible for parole, who is not under sentence of death or of life imprisonment, and who because of an existing medical or physical condition is determined by the department to be terminally ill or permanently incapacitated may be considered for medical parole by the board. A committed offender may be eligible for medical parole in addition to any other parole. The department shall identify committed offenders who may be eligible for medical parole based upon their medical records.

(2) The board shall decide to grant medical parole only after a review of the medical, institutional, and criminal records of the committed offender and such additional medical evidence from board-ordered examinations or investigations as the board in its discretion determines to be necessary. The decision to grant

medical parole and to establish conditions of release on medical parole in addition to the conditions stated in subsection (3) of this section is within the sole discretion of the board.

(3) As conditions of release on medical parole, the board shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, a hospice, or another housing accommodation suitable to his or her medical condition, including, but not limited to, his or her family's home, as specified by the board.

(4) The parole term of a medical parolee shall be for the remainder of his or her sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.

**Source:** Laws 2005, LB 538, § 25.

**83-1,110.03 Medical parole; revocation; effect.**

(1) If during the term of medical parole the medical condition of a medical parolee improves to the extent that he or she is no longer eligible for medical parole, the board may order that he or she be returned to the custody of the department to await a hearing to determine whether the medical parole should be revoked.

(2) If medical parole is revoked due to improvement in the medical condition of the parolee, he or she shall serve the balance of his or her sentence with credit for time served on medical parole and without forfeiture of any credits accrued for good conduct pursuant to the Nebraska Treatment and Corrections Act prior to medical parole.

(3) If a medical parolee whose medical parole is revoked due to improvement in his or her medical condition would otherwise be eligible for parole or any other release program, he or she may be considered for such release program.

(4) In addition to revocation of medical parole pursuant to subsection (1) of this section, medical parole may also be revoked for violation of any condition of the medical parole established by the board.

**Source:** Laws 2005, LB 538, § 26.

**83-1,111 Committed offender; release on parole; review procedures; release date set; case deferred; reconsideration.**

(1) Every committed offender shall be interviewed and have his or her record reviewed by two or more members of the Board of Parole or a person designated by the board within sixty days before the expiration of his or her minimum term less any reductions as provided in section 83-1,110. If, in the opinion of the reviewers, the review indicates the offender is reasonably likely to be granted parole, the Board of Parole shall schedule a public hearing before a majority of its members. At such hearing the offender may present evidence, call witnesses, and be represented by counsel. If, in the opinion of the reviewers, the review indicates the offender should be denied parole, the offender may request an additional review by a majority of the members of the board. A review by the majority of the members of the board may be conducted not more than once annually. Any hearing and review shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(2) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing or review. The decision shall be by majority vote of the board. The decision shall be based on the entire record before the board, which shall include the opinion of the person who conducted the review. If the board shall deny parole, written notification listing the reasons for such denial and the recommendations for correcting deficiencies which cause the denial shall be given to the committed offender within thirty days following the hearing.

(3) If the board fixes the release date, such date shall be not more than six months from the date of the committed offender's parole hearing, or from the date of last reconsideration of his or her case, unless there are special reasons for fixing a later release date.

(4) If the board defers the case for later reconsideration, the committed offender shall be afforded a parole review at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time.

(5) The release of a committed offender on parole shall not be upon the application of the offender, but by the initiative of the Board of Parole. No application for release on parole made by a committed offender or on his or her behalf shall be entertained by the board. Nothing herein shall prohibit the Director of Correctional Services from recommending to the board that it consider an individual offender for release on parole.

**Source:** Laws 1969, c. 817, § 42, p. 3093; Laws 1972, LB 1499, § 10; Laws 1973, LB 524, § 4; Laws 1975, LB 567, § 7; Laws 1986, LB 1242, § 1; Laws 2003, LB 46, § 24.

Under subsection (4) of this section, annual public hearings must be afforded only to those offenders whose cases have been deferred for later reconsideration and not to those offenders for whom parole has been denied. *Van Ackeren v. Nebraska Bd. of Parole*, 251 Neb. 477, 558 N.W.2d 48 (1997).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63 (1976).

When after defendant's conviction, a statutory change is made in the law governing parole and the defendant thereafter violates his parole, the amended law is applicable and is not *ex post facto* in its application. *Berry v. Wolff*, 193 Neb. 717, 228 N.W.2d 885 (1975).

One who violates parole within three months of date his release would be mandatory hereunder permits exclusion of such offender from the benefits of subsection (5) of this section. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267 (1971).

This section was amended to provide a prisoner, whose eligibility for parole was previously deferred for later consideration, with an annual parole review and a parole hearing if it is determined in the review that the prisoner is reasonably likely to be granted parole. This section, prior to the amendments, provided a prisoner, whose eligibility for parole was previously deferred for consideration, with an annual parole hearing. Implementation of the amendments does not violate the *Ex Post Facto* Clause, because the amendments merely alter the method to be followed in fixing a parole release date under identical substantive standards as previously established, do not create a sufficient risk of increasing the measure of punishment attached to a sentence, and do not modify the statutory punishment imposed for any offenses or alter the standards for determining the initial date for parole eligibility or an inmate's suitability for parole. The amendments merely change the process by which the parole board reviews prisoners' parole possibilities, and implementation of the amendments will not result in a longer period of incarceration for prisoners. *Moore v. Nebraska Bd. of Parole*, 12 Neb. App. 525, 679 N.W.2d 427 (2004).

### **83-1,112 Committed offender; eligible for parole; parole plan of offender.**

(1) Each committed offender eligible for parole shall, in advance of his parole hearing, have a parole plan in accordance with the rules of the Board of Parole. Whenever the board determines that it will facilitate the parole hearing, it may furnish the offender with any information and records to be considered by it at the hearing.

(2) An offender shall be permitted to advise with any person whose assistance he desires, including his own legal counsel, in preparing for a hearing before the Board of Parole.

**Source:** Laws 1969, c. 817, § 43, p. 3095.

**83-1,113 Board of Parole and employees; access to offender; reports on conduct and character.**

The Board of Parole and its employees shall have access at all reasonable times to any committed offender over whom the board may have jurisdiction and shall have means provided for communication with and observing the committed offender. The board shall be furnished such reports as it may require concerning the conduct and character of any committed offender and any other information deemed pertinent by the board in determining whether a committed offender should be paroled.

**Source:** Laws 1969, c. 817, § 44, p. 3095; Laws 1992, Third Spec. Sess., LB 13, § 5; Laws 1994, LB 677, § 9.

**83-1,114 Board of Parole; deferment of parole; grounds.**

(1) Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it shall order his or her release unless it is of the opinion that his or her release should be deferred because:

(a) There is a substantial risk that he or she will not conform to the conditions of parole;

(b) His or her release would depreciate the seriousness of his or her crime or promote disrespect for law;

(c) His or her release would have a substantially adverse effect on institutional discipline; or

(d) His or her continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his or her capacity to lead a law-abiding life when released at a later date.

(2) In making its determination regarding a committed offender's release on parole, the Board of Parole shall take into account each of the following factors:

(a) The offender's personality, including his or her maturity, stability, and sense of responsibility and any apparent development in his or her personality which may promote or hinder his or her conformity to law;

(b) The adequacy of the offender's parole plan;

(c) The offender's ability and readiness to assume obligations and undertake responsibilities;

(d) The offender's intelligence and training;

(e) The offender's family status and whether he or she has relatives who display an interest in him or her or whether he or she has other close and constructive associations in the community;

(f) The offender's employment history, his or her occupational skills, and the stability of his or her past employment;

(g) The type of residence, neighborhood, or community in which the offender plans to live;

(h) The offender's past use of narcotics or past habitual and excessive use of alcohol;

(i) The offender's mental or physical makeup, including any disability or handicap which may affect his or her conformity to law;

- (j) The offender's prior criminal record, including the nature and circumstances, recency, and frequency of previous offenses;
- (k) The offender's attitude toward law and authority;
- (l) The offender's conduct in the facility, including particularly whether he or she has taken advantage of the opportunities for self-improvement, whether he or she has been punished for misconduct within six months prior to his or her hearing or reconsideration for parole release, whether any reductions of term have been forfeited, and whether such reductions have been restored at the time of hearing or reconsideration;
- (m) The offender's behavior and attitude during any previous experience of probation or parole and the recency of such experience;
- (n) The risk and needs assessment completed pursuant to section 83-192; and
- (o) Any other factors the board determines to be relevant.

**Source:** Laws 1969, c. 817, § 45, p. 3095; Laws 2006, LB 1113, § 51.

The expectancy of release created by this section is not entitled to constitutional protection. *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1 (1979).

The procedure in use under this section, which requires at least one hearing per year for each inmate, provides all necessary due process with respect to the discretionary parole deci-

sion. *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1 (1979).

The argument that a facially neutral parole policy has a racially disproportionate impact, and is unconstitutional, is without merit. *Inmates of Nebraska Penal & Correctional Complex v. Greenholtz*, 436 F.Supp. 432 (D. Neb. 1976).

**83-1,115 Board of Parole; determination regarding committed offender's parole; factors considered.**

Before making a determination regarding a committed offender's release on parole, the Board of Parole shall consider the following:

- (1) A report prepared by the institutional caseworkers relating to his or her personality, social history, and adjustment to authority, and including any recommendations which the staff of the facility may make;
- (2) All official reports of his or her prior criminal record, including reports and records of earlier probation and parole experiences;
- (3) The presentence investigation report;
- (4) Recommendations regarding his or her parole made at the time of sentencing by the sentencing judge;
- (5) The reports of any physical, mental, and psychiatric examinations of the offender;
- (6) Any relevant information which may be submitted by the offender, his or her attorney, the victim of his or her crime, or other persons;
- (7) The risk and needs assessment completed pursuant to section 83-192; and
- (8) Such other relevant information concerning the offender as may be reasonably available.

**Source:** Laws 1969, c. 817, § 46, p. 3097; Laws 2006, LB 1113, § 52.

**83-1,116 Committed offender; release on parole; conditions of parole.**

- (1) When a committed offender is released on parole, the board shall require as a condition of parole that the offender refrain from engaging in criminal conduct and may require the offender to submit to periodic testing for drug and alcohol use. The board may also require, either at the time of the offender's

release on parole or at any time while the offender remains on parole, that the offender conform to any of the following conditions of parole:

- (a) Meet specified family responsibilities;
  - (b) Devote himself or herself to an approved employment;
  - (c) Remain in the geographic limits fixed in the certificate of parole unless granted written permission to leave such limits;
  - (d) Report, as directed, to his or her district parole officer;
  - (e) Reside at the place fixed in the certificate of parole and notify his or her district parole officer of any change in address or employment;
  - (f) Submit himself or herself to available medical, psychological, psychiatric, or other treatment;
  - (g) Refrain from associating with persons known to him or her to be engaged in criminal activities or, without permission of his or her district parole officer, with persons known to him or her to have been convicted of a crime; and
  - (h) Satisfy any other conditions specially related to the cause of his or her offense and not unduly restrictive of his or her liberty or conscience.
- (2) Before release on parole, a parolee shall be provided with a certificate of parole setting forth the conditions of the parole.

**Source:** Laws 1969, c. 817, § 47, p. 3097; Laws 1995, LB 371, § 22.

**83-1,117 Parolee; conditions of parole.**

The Board of Parole may in appropriate cases require a parolee, as a condition of his parole, either at the time of his release on parole or at any time while he remains under parole supervision, to reside in a community guidance center, boarding facility, halfway house, hospital, or other special residence facility, for such period and under such supervision or treatment as the board may deem appropriate.

**Source:** Laws 1969, c. 817, § 48, p. 3098.

**83-1,118 Board of Parole; parolee; discharge from parole; when; Department of Correctional Services; discharge from custody; notice of civil rights.**

(1) If, in the opinion of the board, a parolee does not require guidance or supervision, the board may dispense with and terminate such supervision.

(2) The board may discharge a parolee from parole at any time if such discharge is compatible with the protection of the public and is in the best interest of the parolee.

(3) The board shall discharge a parolee from parole when the time served in the custody of the department and the time served on parole equal the maximum term less good time.

(4) The department shall discharge a committed offender from the custody of the department when the time served in the facility equals the maximum term less good time.

(5) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored two years after completion of the sentence. The notice shall also include information on restoring other

civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(6) The Board of Parole may discharge a parolee from parole when such parolee is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

**Source:** Laws 1969, c. 817, § 49, p. 3098; Laws 1975, LB 567, § 8; Laws 1992, LB 816, § 6; Laws 1994, LB 677, § 10; Laws 2002, LB 1054, § 28; Laws 2003, LB 46, § 25; Laws 2005, LB 53, § 7.

Applies retroactively to prisoners who receive Board of Pardons approval. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

**83-1,119 Parolee; violation of parole; parole officer; report to Board of Parole; action of board.**

(1) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole but that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall submit a written report to the Board of Parole which may, on the basis of such report and such further investigation as it may deem appropriate:

- (a) Dismiss the charge of violation;
- (b) Determine whether the parolee violated the conditions of his or her parole;
- (c) Revoke his or her parole in accordance with the Nebraska Treatment and Corrections Act; or
- (d) Issue a warrant for the arrest of the parolee.

(2) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole and that the parolee will attempt to leave the jurisdiction or will place lives or property in danger, the parole officer shall arrest the parolee without a warrant and call on any peace officer to assist him or her in doing so.

(3) Whenever a parolee is arrested with or without a warrant, he or she shall be detained in a local jail or other detention facility. Immediately after such arrest and detention, the parole officer shall notify the Board of Parole and submit a written report of the reason for such arrest. A complete investigation shall be made by the parole administration and submitted to the parole board. After prompt consideration of such written report, the board shall order the parolee's release from detention or continued confinement to await a final decision on the revocation of parole.

**Source:** Laws 1969, c. 817, § 50, p. 3099; Laws 1973, LB 524, § 5; Laws 1997, LB 396, § 25.

**83-1,120 Parolee; violation of parole; hearing.**

Whenever a parolee is charged with a violation of his parole, he shall be entitled to a prompt hearing on such charge by the Board of Parole, which in no event shall occur more than thirty days after receipt of the parole officer's written report. At such hearing, the parolee shall be permitted to be present, to testify, to produce witnesses, to cross-examine adverse witnesses, and to intro-

duce such other evidence as may be pertinent. The parolee shall be informed of his right to request counsel at such hearing, and if he thereafter makes such request, based on a timely and colorable claim (1) that he has not committed the alleged violation of the conditions upon which he is at liberty, or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present, and upon consideration of whether or not the parolee appears to be capable of speaking effectively for himself, the board in the exercise of a sound discretion may provide counsel unless retained counsel is available to the parolee. In every case when a request for counsel is refused, the grounds for refusal shall be stated in the record.

**Source:** Laws 1969, c. 817, § 51, p. 3099; Laws 1972, LB 1499, § 11; Laws 1973, LB 524, § 6.

**83-1,121 Parolee; legal custody of Board of Parole; action of board.**

A committed offender while on parole shall remain in the legal custody and control of the Board of Parole. The board may at any time revoke the parole of an offender or recommit him to the custody of the Department of Correctional Services, with or without cause.

**Source:** Laws 1969, c. 817, § 52, p. 3100.

Constitutional due process does not require the Board of Parole to conduct an adversary hearing to revoke parole nor does it require appointment of counsel for indigent parolees nor compulsory process. *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735 (1971).

**83-1,122 Parolee; violation of parole; action of Board of Parole.**

(1) If the board finds that the parolee has engaged in criminal conduct, used drugs or alcohol, or refused to submit to a drug or alcohol test while on parole, the board may order revocation of the parolee's parole.

(2) If the board finds that the parolee did violate a condition of parole but is of the opinion that revocation of parole is not appropriate, the board may order that:

- (a) The parolee receive a reprimand and warning;
  - (b) Parole supervision and reporting be intensified;
  - (c) Good time granted pursuant to section 83-1,108 be forfeited or withheld;
- or
- (d) The parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with the Nebraska Treatment and Corrections Act.

**Source:** Laws 1969, c. 817, § 53, p. 3100; Laws 1992, LB 816, § 7; Laws 1995, LB 371, § 23.

**83-1,123 Parole; revoked; action of Board of Parole.**

(1) A parolee whose parole is revoked shall be recommitted to the department until discharge from the custody of the state becomes mandatory or until reparaoled by the board.

(2) The time from the date of the parolee's declared delinquency until the date of arrest for the custody of the board shall not be counted as any portion of the time served.

(3) A parolee whose parole has been revoked shall be considered by the board for reparole at any time in the same manner as any other committed offender eligible for parole.

(4) Except in the case of a parolee who has left the jurisdiction or his or her place of residence, action revoking a parolee's parole and recommitting the parolee for violation of the conditions of parole must be taken before the expiration of the parole term less good time. A parolee who has left the jurisdiction or his or her place of residence shall be treated as a parole violator and, when apprehended, shall be subject to recommitment or to supervision for the balance of the parole term as of the date of the violation.

**Source:** Laws 1969, c. 817, § 54, p. 3100; Laws 1972, LB 1499, § 12; Laws 1992, LB 816, § 8; Laws 1995, LB 371, § 24; Laws 2003, LB 46, § 26.

A Nebraska parole violator who is serving an Iowa sentence imposed for a subsequent offense does not recommence serving his Nebraska sentence until he has been released from custody by Iowa and arrested for the custody of the Nebraska Board of Parole. *Falkner v. Neb. Board of Parole*, 213 Neb. 474, 330 N.W.2d 141 (1983).

Before a writ of mandamus may properly issue, an official's duty must be clearly expressed. Under this statute the board has no duty to recommit a parolee until he is in legal custody of the board. *State ex rel. Jakes v. Nebraska Board of Parole*, 212 Neb. 181, 322 N.W.2d 394 (1982).

**83-1,124 Parolee; unauthorized leaving of state; penalty; where tried; cost of return; paid by state.**

(1) A person is guilty of a felony if, while on parole under the Nebraska Treatment and Corrections Act, he or she violates parole by leaving the State of Nebraska without the authority of the Board of Parole, and shall, upon conviction thereof, be punished by commitment to the Department of Correctional Services for not more than five years.

(2) A parolee charged with a violation of this section shall be tried in Lancaster County or in the county where the parolee last resided. The state shall pay for expenses incurred in returning the parolee to the county in which the action is to be tried.

**Source:** Laws 1969, c. 817, § 55, p. 3100; Laws 1997, LB 396, § 26.

**83-1,125 Warrant or detainer; administrator; board; duties.**

(1) If a warrant or detainer is placed against a committed offender by a court, parole agency, or other authority of this or any other jurisdiction, the administrator shall inquire before such offender becomes eligible for parole whether the authority concerned intends to execute or withdraw the warrant or detainer when the offender is released.

(2) If the authority notifies the administrator that it intends to execute the warrant or detainer when the offender is released, the administrator shall advise the authority concerned of the sentence under which the offender is held, the time of parole eligibility, any decision of the board relating to the offender, and the nature of the offender's adjustment during imprisonment and shall give reasonable notice to such authority of the offender's release date.

(3) The board may parole an offender who is eligible for release to a warrant or detainer. If an offender is paroled to such a warrant or detainer, the board may provide, as a condition of release, that if the charge or charges on which the warrant or detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender

to serve the remainder of the parole term or such part as the board may determine.

(4) If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction, prior to the expiration of the parole term less good time in this state, the board may permit the person to serve the remainder of the parole term or such part as the board may determine concurrently with the person's new probation or parole term. Such concurrent terms may be served in either of the two jurisdictions, and supervision shall be administered in accordance with the Interstate Compact for Adult Offender Supervision.

**Source:** Laws 1969, c. 817, § 56, p. 3101; Laws 1992, LB 816, § 9; Laws 2003, LB 46, § 27.

**Note:** Laws 2003, LB 46, section 51, provided this section became operative "when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision". By June 2002, the compact had reached this threshold. (see [www.interstatecompact.org](http://www.interstatecompact.org)) LB 46 became effective May 24, 2003.

#### Cross References

**Interstate Compact for Adult Offender Supervision**, see section 29-2639.

### **83-1,126 Board of Pardons; created; members; secretary.**

There is hereby created the Board of Pardons which shall consist of the Governor, Attorney General, and Secretary of State. The Governor shall be chairperson of the board. The Secretary of State shall be secretary of the board and keep its records or designate such a record keeper.

**Source:** Laws 1969, c. 817, § 57, p. 3102; Laws 1994, LB 677, § 11.

#### **83-1,126.01 Persons subject to act.**

Any person in the custody of the Department of Correctional Services or under supervision of the Board of Parole shall be subject to the provisions of the Nebraska Treatment and Corrections Act.

**Source:** Laws 1975, LB 567, § 9; Laws 1994, LB 677, § 12.

Approval of the Board of Pardons to apply this provision was required where the petitioner would be released from custodial confinement under this provision at an earlier date than he would have been under the prior law in effect at the time of his sentencing. Actions of the Board of Pardons in allowing or denying the benefits of this provision are an exercise of its power to grant clemency, and not subject to ordinary due

process requirements. *Whited v. Bolin*, 210 Neb. 32, 312 N.W.2d 691 (1981).

This section means prisoners need the approval of the Board of Pardons before the provisions of Laws 1975, L.B. 567, apply retroactively. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869 (1977).

### **83-1,127 Board of Pardons; duties.**

The Board of Pardons shall:

- (1) Exercise the pardon authority as defined in section 83-170 for all criminal offenses except treason and cases of impeachment;
- (2) Make rules and regulations for its own administration and operation;
- (3) Appoint and remove its employees as prescribed by the State Personnel System and delegate appropriate powers and duties to them;
- (4) Consult with the Board of Parole concerning applications for the exercise of pardon authority;
- (5) Consult with the Department of Motor Vehicles concerning applications received from the department pursuant to section 60-6,209 for the exercise of pardon authority; and

(6) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the provisions of the Nebraska Treatment and Corrections Act.

**Source:** Laws 1969, c. 817, § 58, p. 3102; Laws 1979, LB 322, § 66; Laws 1981, LB 545, § 44; Laws 1992, Third Spec. Sess., LB 13, § 6; Laws 1994, LB 677, § 13; Laws 1998, LB 309, § 25.

**Cross References**

**State Personnel System**, see section 81-1301 et seq.

**83-1,127.01 Department of Correctional Services; provide services to Board of Pardons and Board of Parole.**

The department, subject to available resources, shall provide all accounting, budgeting, and payroll services to the Board of Pardons and the Board of Parole at no expense to such boards.

**Source:** Laws 1992, Third Spec. Sess., LB 13, § 8; Laws 1994, LB 677, § 14.

**83-1,127.02 Board of Pardons; ignition interlock permit; ignition interlock device restriction; violation; penalty.**

(1) The Board of Pardons may, in its sole discretion, when granting a reprieve to any person who has made application pursuant to section 60-6,209, order such person to obtain an ignition interlock permit and to operate only motor vehicles equipped with an ignition interlock device approved by the Director of Motor Vehicles. The Board of Pardons may order the person to hold the ignition interlock permit and use an ignition interlock device for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a license reinstatement is made.

(2) Any person ordered by the Board of Pardons to operate only motor vehicles equipped with such an ignition interlock device shall make application to the director for the issuance of an ignition interlock permit pursuant to section 60-4,118.06.

(3) Any such person restricted to operating a motor vehicle equipped with such an ignition interlock device who operates upon the highways of this state a motor vehicle without such an ignition interlock device, who operates a motor vehicle equipped with such an ignition interlock device which has been disabled, bypassed, or altered in any way, or who operates a motor vehicle equipped with such an ignition interlock device without obtaining an ignition interlock permit, is guilty of a Class IV felony. The court shall, as a part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of fifteen years from the date ordered by the court. The court shall also order that the operator's license of such person be revoked for a like period. The revocation shall be administered upon sentencing, upon the final judgment of any appeal or review, or upon the date that any probation is revoked.

**Source:** Laws 1998, LB 309, § 27; Laws 2001, LB 38, § 60; Laws 2008, LB736, § 12.

Operative date January 1, 2009.

**83-1,128 Board of Pardons; issue process; service; compel attendance of witnesses; fees.**

In the performance of official duties, the Board of Pardons or any member thereof shall have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of an inquiry, and to administer oaths and take the testimony of persons under oath. Subpoenas so issued may be served by any sheriff, constable, police officer, parole officer, or peace officer in the same manner as similar process in the district court. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before the district court is subject. Any district court of this state, upon application by the board, may compel the attendance of such witnesses, the production of such material, and the giving of testimony before the board by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such court. Every person shall attend as a witness when subpoenaed anywhere within the state and shall be entitled to the same fees, if requested, as a witness in the district court and mileage as provided in section 81-1176 for state employees. Fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses shall be paid by the board.

**Source:** Laws 1969, c. 817, § 59, p. 3102; Laws 1981, LB 204, § 203; Laws 1988, LB 864, § 65.

**83-1,129 Board of Pardons; pardon authority; application; consideration.**

(1) Any person desiring the Board of Pardons to exercise its pardon authority shall request an application from its secretary. The application shall be returned to the secretary and shall state the specific relief requested and such other information as is prescribed by the board.

(2) Any person whose operator's license has been revoked pursuant to a conviction for a violation of section 60-6,196 or 60-6,197 for a third or subsequent time for a period of fifteen years and who desires the Board of Pardons to exercise its pardon authority shall make application pursuant to section 60-6,209.

(3) Any application filed pursuant to subsection (1) or (2) of this section shall be considered with or without a hearing by the board at its next regular scheduled meeting. If a hearing is held, it shall be conducted in an informal manner and a record of the proceedings shall be made and preserved according to the guidelines of the board.

**Source:** Laws 1969, c. 817, § 60, p. 3103; Laws 1994, LB 677, § 15; Laws 1998, LB 309, § 26; Laws 2003, LB 209, § 17; Laws 2004, LB 208, § 23.

There are no provisions in Nebraska's Constitution or its statutes creating a liberty interest in commutation hearings other than the right to file an application for commutation. Otey v. State, 240 Neb. 813, 485 N.W.2d 153 (1992).

**83-1,130 Board of Pardons; pardon authority; application; limitation; relief granted or denied.**

(1) After consideration of the application and after such further investigations as it may deem appropriate, the Board of Pardons shall either grant or deny the

relief requested or grant such other relief as may be justified. The board may decline to accept further applications after the initial application for pardon from an offender for any prescribed amount of time, but in no case shall such time exceed two years. The board shall notify the offender in writing of any restriction for subsequent applications after the hearing on the initial application.

(2) The Board of Pardons may, in appropriate cases when a person has been convicted of a felony and has been granted a pardon by the appropriate authority of this state or is hereafter granted a pardon for a conviction occurring prior to, on, or subsequent to August 25, 1969, empower the Governor to expressly authorize such person to receive, possess, or transport in commerce a firearm.

(3) All actions of the Board of Pardons shall be by majority vote and shall be filed in the office of the Secretary of State or the office designated by the Secretary of State.

**Source:** Laws 1969, c. 817, § 61, p. 3103; Laws 1994, LB 677, § 16.

With regard to the actions of the Board of Pardons in the exercise of its power to grant commutations, the exercise or nonexercise of a discretionary power to grant clemency is not subject to ordinary due process requirements. The Nebraska Board of Pardons has the unfettered discretion to grant or deny a commutation of a lawfully imposed sentence for any reason or for no reason at all. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

**83-1,131 Offender; granted a reprieve; commit to Department of Correctional Services.**

An offender who has been granted a reprieve may be committed by the Board of Pardons to the Department of Correctional Services. The costs of transporting the offender to the department shall be allowed and paid by the state.

**Source:** Laws 1969, c. 817, § 62, p. 3104.

**83-1,132 Committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix.**

Whenever an application for exercise of the pardon authority is filed with the secretary of the Board of Pardons by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon such application. If the board denies the relief requested it may set the time and date of execution and refuse to accept for filing further applications from such offender.

**Source:** Laws 1969, c. 817, § 63, p. 3104.

The Board of Pardons may set the time and date of execution only when it denies an application for the exercise of pardon authority. An application filed under this section results in an automatic stay of execution until a ruling by the pardons board. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

**83-1,133 Prohibited acts; threat of harm to member of Board of Pardons; penalty.**

A person shall be guilty of a Class IV felony if he threatens or attempts to threaten harm to a member of the Board of Pardons with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as member of the board or if he purposely or knowingly privately addresses to any member of the board any representation, entreaty, argument or other communication designed to influence the outcome of any application

which is or may come before the board on the basis of considerations other than those authorized by law.

**Source:** Laws 1969, c. 817, § 64, p. 3104; Laws 1977, LB 39, § 311; Laws 1978, LB 748, § 47.

**83-1,134 Administrative procedure provisions; not applicable.**

The provisions of the Administrative Procedure Act shall not apply to the Board of Pardons or to the exercise of its functions.

**Source:** Laws 1969, c. 817, § 65, p. 3104.

**Cross References**

Administrative Procedure Act, see section 84-920.

**83-1,135 Act, how cited.**

Sections 83-170 to 83-1,135 shall be known and may be cited as the Nebraska Treatment and Corrections Act.

**Source:** Laws 1969, c. 817, § 85, p. 3112; Laws 1992, Third Spec. Sess., LB 13, § 9; Laws 1995, LB 371, § 25; Laws 1997, LB 274, § 2; Laws 1997, LB 364, § 21; Laws 1998, LB 309, § 28; Laws 2003, LB 46, § 28; Laws 2005, LB 538, § 24; Laws 2006, LB 1199, § 99.

**83-1,135.01 Transferred to section 83-1,110.01.**

**83-1,135.02 Changes under Laws 2003, LB 46; legislative intent.**

It is the intent of the Legislature that the changes made to the Nebraska Treatment and Corrections Act by Laws 2003, LB 46, with respect to parole eligibility apply to all committed offenders under sentence and not on parole on May 24, 2003, and to all persons sentenced on and after such date.

**Source:** Laws 2003, LB 46, § 50.

**Cross References**

Nebraska Treatment and Corrections Act, see section 83-1,135.

(g) DIVISION OF JUVENILE DELINQUENCY

**83-1,136 Transferred to section 83-925.**

**83-1,137 Transferred to section 83-927.**

**83-1,138 Transferred to section 83-928.**

**83-1,139 Transferred to section 83-929.**

**83-1,140 Transferred to section 83-930.**

(h) MENTAL RETARDATION

**83-1,141 Repealed. Laws 1991, LB 830, § 36.**

**83-1,142 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143.01 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143.02 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143.03 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143.04 Repealed. Laws 1991, LB 703, § 81; Laws 1991, LB 830, § 36.**

**83-1,143.05 Repealed. Laws 1991, LB 830, § 36.**

**83-1,143.06 Developmental disability regions; enumerated.**

There are hereby created six developmental disability regions in the state. Each region shall consist of the following counties:

Region 1 shall consist of Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Kimball, Banner, Cheyenne, and Deuel counties;

Region 2 shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, and Red Willow counties;

Region 3 shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Merrick, Buffalo, Hall, Hamilton, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Franklin, Webster, and Nuckolls counties;

Region 4 shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Antelope, Pierce, Wayne, Dakota, Thurston, Madison, Stanton, Cuming, Burt, Boone, Platte, Colfax, and Nance counties;

Region 5 shall consist of Saunders, York, Seward, Lancaster, Otoe, Polk, Butler, Fillmore, Saline, Gage, Johnson, Nemaha, Thayer, Jefferson, Pawnee, and Richardson counties; and

Region 6 shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties.

**Source:** Laws 1973, LB 311, § 8; Laws 1974, LB 302, § 16; Laws 1991, LB 830, § 34.

**83-1,143.07 Repealed. Laws 1991, LB 830, § 36.**

**83-1,144 Repealed. Laws 1991, LB 830, § 36.**

**83-1,144.01 Repealed. Laws 1991, LB 830, § 36.**

**83-1,145 Repealed. Laws 1973, LB 311, § 10.**

**83-1,146 Repealed. Laws 1991, LB 830, § 36.**

(i) DIVISION OF MEDICAL SERVICES

**83-1,147 Transferred to section 83-101.06.**

**83-1,148 Transferred to section 83-125.**

**83-1,149 Repealed. Laws 1996, LB 1155, § 121.**

**83-1,150 Repealed. Laws 1996, LB 1155, § 121.**

**83-1,151 Repealed. Laws 1996, LB 1155, § 121.**

**83-1,152 Repealed. Laws 1996, LB 1155, § 121.****ARTICLE 2  
SCHOOLS****Cross References**

Commission for the Blind and Visually Impaired Act, see section 71-8601.

Nebraska Center for the Education of Children who are Blind or Visually Impaired, see section 79-11,109 et seq.

**(a) VOCATIONAL REHABILITATION**

Section	
83-201.	Repealed. Laws 1959, c. 419, § 13.
83-202.	Repealed. Laws 1959, c. 419, § 13.
83-203.	Transferred to section 79-11,111.
83-204.	Transferred to section 79-11,100.
83-205.	Repealed. Laws 1959, c. 419, § 13.
83-206.	Repealed. Laws 1959, c. 419, § 13.
83-207.	Transferred to section 79-1906.
83-208.	Repealed. Laws 1959, c. 419, § 13.
83-209.	Repealed. Laws 1959, c. 419, § 13.
83-210.	Repealed. Laws 1976, LB 674, § 7.
83-210.01.	Transferred to section 71-8612.
83-210.02.	Transferred to section 71-8610.
83-210.03.	Transferred to section 71-8611.
83-210.04.	Repealed. Laws 2000, LB 352, § 24.
83-210.05.	Repealed. Laws 2000, LB 352, § 24.
83-210.06.	Repealed. Laws 2000, LB 352, § 24.
83-210.07.	Repealed. Laws 2000, LB 352, § 24.
83-211.	Transferred to section 71-8605.
83-211.01.	Repealed. Laws 1988, LB 810, § 3.
83-211.02.	Transferred to section 71-8606.
83-212.	Repealed. Laws 2000, LB 352, § 24.
83-213.	Repealed. Laws 1947, c. 332, § 5.
83-214.	Repealed. Laws 1947, c. 332, § 5.
83-215.	Repealed. Laws 1947, c. 332, § 5.
83-216.	Repealed. Laws 1947, c. 332, § 5.

**(b) BEATRICE STATE DEVELOPMENTAL CENTER**

83-217.	Beatrice State Developmental Center; designation.
83-217.01.	Repealed. Laws 1986, LB 742, § 1.
83-218.	Beatrice State Developmental Center; purpose.
83-219.	Repealed. Laws 1967, c. 251, § 17.
83-220.	Repealed. Laws 1981, LB 499, § 44.
83-221.	Repealed. Laws 1981, LB 499, § 44.
83-222.	Repealed. Laws 1981, LB 499, § 44.
83-223.	Order of commitment where mentally handicapped person is an inmate in a state institution.
83-224.	Repealed. Laws 1969, c. 812, § 25.
83-225.	Repealed. Laws 1969, c. 812, § 25.
83-226.	Repealed. Laws 1969, c. 812, § 25.
83-227.	Repealed. Laws 1969, c. 812, § 25.
83-227.01.	Beatrice State Developmental Center; patients transferred to temporary surplus space in regional centers at Lincoln and Norfolk; care, custody, and treatment.
83-227.02.	Inmates; transfer; care; cost; exception.
83-228.	Repealed. Laws 1951, c. 324, § 1.
83-229.	Repealed. Laws 1951, c. 324, § 1.
83-230.	Repealed. Laws 1951, c. 324, § 1.
83-231.	Repealed. Laws 1951, c. 324, § 1.
83-232.	Repealed. Laws 1951, c. 324, § 1.
83-233.	Repealed. Laws 1951, c. 324, § 1.

Section

- 83-234. Repealed. Laws 1951, c. 324, § 1.
- 83-235. Repealed. Laws 1951, c. 324, § 1.
- 83-236. Repealed. Laws 1951, c. 324, § 1.
- 83-237. Repealed. Laws 1951, c. 324, § 1.
- 83-238. Repealed. Laws 1951, c. 324, § 1.

(c) HOME FOR CHILDREN

- 83-239. Transferred to section 43-901.
- 83-240. Transferred to section 43-902.
- 83-241. Transferred to section 43-903.
- 83-242. Transferred to section 43-904.
- 83-243. Transferred to section 43-905.
- 83-244. Repealed. Laws 1961, c. 415, § 38.
- 83-245. Transferred to section 43-906.

(d) MENTALLY RETARDED CHILDREN

- 83-246. Transferred to section 43-617.
- 83-247. Transferred to section 43-618.

(a) VOCATIONAL REHABILITATION

- 83-201 Repealed. Laws 1959, c. 419, § 13.**
- 83-202 Repealed. Laws 1959, c. 419, § 13.**
- 83-203 Transferred to section 79-11,111.**
- 83-204 Transferred to section 79-11,100.**
- 83-205 Repealed. Laws 1959, c. 419, § 13.**
- 83-206 Repealed. Laws 1959, c. 419, § 13.**
- 83-207 Transferred to section 79-1906.**
- 83-208 Repealed. Laws 1959, c. 419, § 13.**
- 83-209 Repealed. Laws 1959, c. 419, § 13.**
- 83-210 Repealed. Laws 1976, LB 674, § 7.**
- 83-210.01 Transferred to section 71-8612.**
- 83-210.02 Transferred to section 71-8610.**
- 83-210.03 Transferred to section 71-8611.**
- 83-210.04 Repealed. Laws 2000, LB 352, § 24.**
- 83-210.05 Repealed. Laws 2000, LB 352, § 24.**
- 83-210.06 Repealed. Laws 2000, LB 352, § 24.**
- 83-210.07 Repealed. Laws 2000, LB 352, § 24.**
- 83-211 Transferred to section 71-8605.**
- 83-211.01 Repealed. Laws 1988, LB 810, § 3.**
- 83-211.02 Transferred to section 71-8606.**

**83-212 Repealed. Laws 2000, LB 352, § 24.**

**83-213 Repealed. Laws 1947, c. 332, § 5.**

**83-214 Repealed. Laws 1947, c. 332, § 5.**

**83-215 Repealed. Laws 1947, c. 332, § 5.**

**83-216 Repealed. Laws 1947, c. 332, § 5.**

(b) BEATRICE STATE DEVELOPMENTAL CENTER

**83-217 Beatrice State Developmental Center; designation.**

The Nebraska institution for children with mental retardation and adults requiring residential care shall be known and designated as the Beatrice State Developmental Center.

**Source:** Laws 1885, c. 52, § 1, p. 255; R.S.1913, § 7220; Laws 1921, c. 241, § 1, p. 843; C.S.1922, § 6878; C.S.1929, § 83-401; R.S. 1943, § 83-217; Laws 1967, c. 251, § 4, p. 663; Laws 1969, c. 816, § 13, p. 3068; Laws 1976, LB 974, § 2; Laws 1986, LB 1177, § 44.

**Cross References**

**Administration of Beatrice State Developmental Center,** see section 83-1209.

**Rights of persons admitted,** see sections 83-381 to 83-390.

**83-217.01 Repealed. Laws 1986, LB 742, § 1.**

**83-218 Beatrice State Developmental Center; purpose.**

The Beatrice State Developmental Center shall provide residential care and humane treatment for those persons with mental retardation who require residential care, shall study to improve their condition, shall classify them, and shall furnish such training in industrial, mechanical, agricultural, and academic subjects as they may be capable of learning. Whenever the Department of Health and Human Services determines that continued residence in the Beatrice State Developmental Center is no longer necessary for the welfare, care, treatment, or training of such person, it shall have authority to discharge or transfer such person as provided in section 83-387. The Department of Health and Human Services shall discharge any person from the Beatrice State Developmental Center without requiring sterilization of such person, if the discharge satisfies the requirements of this section, notwithstanding any court order, judgment, or decree rendered prior to December 25, 1969, requiring sterilization as a condition of discharge.

**Source:** Laws 1885, c. 52, § 2, p. 255; R.S.1913, § 7221; Laws 1921, c. 241, § 1, p. 843; C.S.1922, § 6879; C.S.1929, § 83-402; R.S. 1943, § 83-218; Laws 1967, c. 251, § 5, p. 663; Laws 1969, c. 816, § 14, p. 3068; Laws 1986, LB 1177, § 45; Laws 1996, LB 1044, § 937.

**Cross References**

**Rights of persons admitted,** see sections 83-381 to 83-390.

**83-219 Repealed. Laws 1967, c. 251, § 17.**

**83-220 Repealed. Laws 1981, LB 499, § 44.**

**83-221 Repealed. Laws 1981, LB 499, § 44.**

**83-222 Repealed. Laws 1981, LB 499, § 44.**

**83-223 Order of commitment where mentally handicapped person is an inmate in a state institution.**

Where the person named in the petition for commitment is a resident, patient, or inmate of a state institution, the court may commit the person to the care and custody of the Department of Health and Human Services. The department may, in its discretion, detain the resident, patient, or inmate in the institution in which he or she is a resident, patient, or inmate at the time of the hearing, subject to the rules of that institution, or may transfer him or her to the Beatrice State Developmental Center.

**Source:** Laws 1921, c. 241, § 3, p. 844; C.S.1922, § 6881; C.S.1929, § 83-404; R.S.1943, § 83-223; Laws 1967, c. 251, § 9, p. 666; Laws 1996, LB 1044, § 938.

**83-224 Repealed. Laws 1969, c. 812, § 25.**

**83-225 Repealed. Laws 1969, c. 812, § 25.**

**83-226 Repealed. Laws 1969, c. 812, § 25.**

**83-227 Repealed. Laws 1969, c. 812, § 25.**

**83-227.01 Beatrice State Developmental Center; patients transferred to temporary surplus space in regional centers at Lincoln and Norfolk; care, custody, and treatment.**

The Department of Health and Human Services is authorized to utilize space which is temporarily surplus to the needs of the Lincoln Regional Center and the Norfolk Regional Center facilities under their jurisdiction for patients committed to or lawfully confined in the Beatrice State Developmental Center. Patients so transferred to the Lincoln Regional Center or the Norfolk Regional Center shall be housed in facilities separate and apart from facilities used to house patients committed to such hospital, and after their transfer such patients shall receive the same type of care, custody, and treatment as they would have received had they remained at the Beatrice State Developmental Center, and the charges for their care and maintenance shall be the same as though they were housed at the Beatrice State Developmental Center, and the charges shall be collected in the manner provided in this section and sections 83-227.02, 83-350, and 83-363 to 83-380.

**Source:** Laws 1961, c. 444, § 1, p. 1365; Laws 1969, c. 812, § 19, p. 3056; Laws 1969, c. 818, § 10, p. 3118; Laws 1996, LB 1155, § 84; Laws 1997, LB 307, § 221.

**83-227.02 Inmates; transfer; care; cost; exception.**

(1) The Department of Health and Human Services is authorized to use space which is temporarily surplus to the needs of any institution under its control, except as provided in subsection (2) of this section, for the care, custody, and treatment of the inmates of any other such institution when space at such latter institution is inadequate and the facilities of the institution to which transfer is made are suitable to the needs of the inmate. Inmates so transferred shall

receive the same care, custody, and treatment as they would have received had they not been transferred. If the cost of the care, custody, and treatment of such inmate is recoverable by the institution from which the transfer was made, it shall be recovered in the manner provided in sections 83-363 to 83-380.

(2) Subsection (1) of this section shall not be construed to permit the transfer of inmates to or from any Department of Correctional Services facility unless expressly authorized by law.

**Source:** Laws 1965, c. 559, § 1, p. 1843; Laws 1969, c. 812, § 20, p. 3056; Laws 1993, LB 31, § 33; Laws 1996, LB 1044, § 939.

**83-228 Repealed. Laws 1951, c. 324, § 1.**

**83-229 Repealed. Laws 1951, c. 324, § 1.**

**83-230 Repealed. Laws 1951, c. 324, § 1.**

**83-231 Repealed. Laws 1951, c. 324, § 1.**

**83-232 Repealed. Laws 1951, c. 324, § 1.**

**83-233 Repealed. Laws 1951, c. 324, § 1.**

**83-234 Repealed. Laws 1951, c. 324, § 1.**

**83-235 Repealed. Laws 1951, c. 324, § 1.**

**83-236 Repealed. Laws 1951, c. 324, § 1.**

**83-237 Repealed. Laws 1951, c. 324, § 1.**

**83-238 Repealed. Laws 1951, c. 324, § 1.**

(c) HOME FOR CHILDREN

**83-239 Transferred to section 43-901.**

**83-240 Transferred to section 43-902.**

**83-241 Transferred to section 43-903.**

**83-242 Transferred to section 43-904.**

**83-243 Transferred to section 43-905.**

**83-244 Repealed. Laws 1961, c. 415, § 38.**

**83-245 Transferred to section 43-906.**

(d) MENTALLY RETARDED CHILDREN

**83-246 Transferred to section 43-617.**

**83-247 Transferred to section 43-618.**

**ARTICLE 3  
HOSPITALS**

**Cross References**

Nebraska Mental Health Commitment Act, see section 71-901.

## STATE INSTITUTIONS

### (a) NEBRASKA ORTHOPEDIC HOSPITAL

#### Section

- 83-301. Repealed. Laws 1979, LB 80, § 116.
- 83-302. Repealed. Laws 1979, LB 80, § 116.
- 83-303. Repealed. Laws 1979, LB 80, § 116.
- 83-304. Repealed. Laws 1979, LB 80, § 116.
- 83-304.01. Repealed. Laws 1979, LB 80, § 116.

### (b) STATE HOSPITALS FOR THE MENTALLY ILL

- 83-305. State hospitals for the mentally ill; official titles.
- 83-305.01. Psychiatric services; administration.
- 83-305.02. Psychiatric services; operation; laws governing.
- 83-305.03. University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense.
- 83-305.04. Regional centers; rehabilitation model.
- 83-305.05. Repealed. Laws 2004, LB 1083, § 149.
- 83-306. Repealed. Laws 2004, LB 1083, § 149.
- 83-307. Repealed. Laws 2004, LB 1083, § 149.
- 83-307.01. Repealed. Laws 2004, LB 1083, § 149.
- 83-307.02. Repealed. Laws 1969, c. 821, § 1.
- 83-307.03. Repealed. Laws 1969, c. 821, § 1.
- 83-308. Repealed. Laws 2004, LB 1083, § 149.
- 83-308.01. Repealed. Laws 1996, LB 1155, § 121.
- 83-308.02. Transferred to section 83-1071.
- 83-309. Repealed. Laws 1947, c. 335, § 47.
- 83-310. Repealed. Laws 1947, c. 335, § 47.
- 83-311. Repealed. Laws 2004, LB 1083, § 149.
- 83-312. Repealed. Laws 2004, LB 1083, § 149.
- 83-313. Department of Health and Human Services; trustee for state hospitals for the mentally ill.
- 83-314. State hospitals for the mentally ill; patients' correspondence; supplies; mailing; exception.
- 83-315. Repealed. Laws 1976, LB 806, § 91.
- 83-316. Repealed. Laws 1947, c. 335, § 47.
- 83-317. Repealed. Laws 1976, LB 806, § 91.
- 83-318. Repealed. Laws 2004, LB 1083, § 149.
- 83-319. Repealed. Laws 1976, LB 806, § 91.
- 83-320. Repealed. Laws 1976, LB 806, § 91.
- 83-321. Repealed. Laws 2004, LB 1083, § 149.
- 83-322. Repealed. Laws 1976, LB 806, § 91.
- 83-322.01. Repealed. Laws 1976, LB 806, § 91.
- 83-323. Repealed. Laws 1976, LB 806, § 91.
- 83-323.01. Repealed. Laws 1976, LB 806, § 91.
- 83-324. Department; voluntary application for admission.
- 83-324.01. Repealed. Laws 1953, c. 347, § 1.
- 83-325. Repealed. Laws 1976, LB 806, § 91.
- 83-325.01. Repealed. Laws 1976, LB 806, § 91.
- 83-325.02. Repealed. Laws 1976, LB 806, § 91.
- 83-325.03. Repealed. Laws 1976, LB 806, § 91.
- 83-325.04. Repealed. Laws 1976, LB 806, § 91.
- 83-326. Repealed. Laws 1976, LB 806, § 91.
- 83-327. Repealed. Laws 1976, LB 806, § 91.
- 83-328. Repealed. Laws 1976, LB 806, § 91.
- 83-328.01. Repealed. Laws 1976, LB 806, § 91.
- 83-328.02. Repealed. Laws 1976, LB 806, § 91.
- 83-328.03. Repealed. Laws 1976, LB 806, § 91.
- 83-329. Repealed. Laws 1969, c. 812, § 25.
- 83-329.01. Repealed. Laws 1969, c. 812, § 25.
- 83-329.02. Repealed. Laws 1969, c. 812, § 25.
- 83-329.03. Repealed. Laws 1969, c. 812, § 25.
- 83-329.04. Repealed. Laws 1969, c. 812, § 25.

## HOSPITALS

- Section
- 83-330. Repealed. Laws 1947, c. 335, § 47.
- 83-331. Repealed. Laws 1947, c. 335, § 47.
- 83-332. Repealed. Laws 1976, LB 806, § 91.
- 83-333. Repealed. Laws 1976, LB 806, § 91.
- 83-334. Repealed. Laws 1976, LB 806, § 91.
- 83-335. Repealed. Laws 1976, LB 806, § 91.
- 83-336. Department; mental health board; forms; rules and regulations.
- 83-337. Repealed. Laws 2004, LB 1083, § 149.
- 83-337.01. Repealed. Laws 1959, c. 266, § 1.
- 83-337.02. Repealed. Laws 1959, c. 266, § 1.
- 83-337.03. Repealed. Laws 1959, c. 266, § 1.
- 83-338. State hospitals for the mentally ill; order of admission when facilities are limited.
- 83-339. Repealed. Laws 2004, LB 1083, § 149.
- 83-340. State hospitals for the mentally ill; voluntary patient; discharge; when.
- 83-340.01. Transferred to section 71-936.
- 83-341. Repealed. Laws 1976, LB 806, § 91.
- 83-342. Repealed. Laws 1981, LB 95, § 30.
- 83-343. Repealed. Laws 1976, LB 806, § 91.
- 83-344. Repealed. Laws 1996, LB 1155, § 121.
- 83-345. Repealed. Laws 1969, c. 812, § 25.
- 83-346. Repealed. Laws 1947, c. 335, § 47.
- 83-347. Repealed. Laws 1969, c. 812, § 25.
- 83-348. State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense.
- 83-349. State hospitals for the mentally ill; adjustment of expense between counties; notice; inquiry; effect of delay.
- 83-350. State hospitals for the mentally ill; legal settlement of patient in another county; treatment.
- 83-351. Expenses; adjustment between counties; patients transferred from a state institution.
- 83-352. Repealed. Laws 1969, c. 812, § 25.
- 83-352.01. Repealed. Laws 1969, c. 812, § 25.
- 83-352.02. Repealed. Laws 2004, LB 1083, § 149.
- 83-353. Repealed. Laws 1947, c. 335, § 47.
- 83-354. State hospitals for the mentally ill; equal treatment; special care at private expense.
- 83-355. State hospitals for the mentally ill; admission of nonresidents; expenses paid quarterly in advance.
- 83-356. Mentally ill persons; mistreatment; liability; penalty.
- 83-357. Persons supposed mentally ill; liberty not to be restricted; exception.
- 83-358. Repealed. Laws 1969, c. 817, § 87.
- 83-359. Repealed. Laws 1963, c. 528, § 12.
- 83-360. Repealed. Laws 1963, c. 528, § 12.
- 83-360.01. Repealed. Laws 1969, c. 821, § 1.
- 83-360.02. Repealed. Laws 1969, c. 821, § 1.
- 83-360.03. Repealed. Laws 1969, c. 821, § 1.
- 83-360.04. Repealed. Laws 1969, c. 821, § 1.

### (c) NEBRASKA HOSPITAL FOR THE TUBERCULOUS

- 83-361. Repealed. Laws 1972, LB 1492, § 8.
- 83-362. Repealed. Laws 1972, LB 1492, § 8.

### (d) COST OF PATIENT CARE

- 83-363. Terms, defined.
- 83-364. Cost of patient care; liability of patient and relatives.
- 83-365. Cost of patient care; department; determine.
- 83-366. Cost of patient care; assess against patient or relatives; limitations.
- 83-367. Cost of patient care; relatives; limitation.
- 83-368. Cost of patient care; ability to pay; factors.

§ 83-301

STATE INSTITUTIONS

Section

- 83-369. Cost of patient care; Department of Health and Human Services; determination of ability to pay; factors considered.
- 83-370. Cost of patient care; failure to furnish information; effect.
- 83-371. Department; rules and regulations; adopt.
- 83-372. Cost of patient care; county board; duties.
- 83-373. Cost of patient care; determination; redetermination annually.
- 83-374. Cost of patient care; hearing; appeal.
- 83-375. Cost of patient care; failure to pay; action by Attorney General.
- 83-376. Cost of patient care; failure of patient or relative to pay; cost to be paid by county and state.
- 83-377. Cost of patient care; guardian; duties; liability.
- 83-378. Cost of patient care; claim against estate; voluntary payments.
- 83-379. Cost of patient care; fraudulent transfers; effect.
- 83-380. Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state.
- 83-380.01. Indigent outpatient; prescription medicine; Department of Health and Human Services; pay costs; when.

(e) RESIDENTIAL FACILITIES

- 83-381. Terms, defined.
- 83-382. Residential facilities; admission; department; jurisdiction.
- 83-383. Residential facilities; admission; application; by whom; appointment of guardian.
- 83-384. Residential facilities; application for admission; contents.
- 83-385. Residential facilities; application for admission; referral; return of findings.
- 83-386. Residential facilities; admission; selection by department; priority.
- 83-387. Residential facilities; patient; discharge or transfer; notice; responsibility of department.
- 83-388. Residential facilities; detention after the age of majority.
- 83-389. Residential facility; person with mental retardation; removal; notice; procedure.
- 83-390. Residential facilities; persons admitted; rights retained; rules and regulations.

(f) SKILLED NURSING CARE AND INTERMEDIATE CARE

- 83-391. Terms, defined.
- 83-392. Skilled nursing care; intermediate care; facilities; establish; operate; administered; license.
- 83-393. Persons needing care; admission.

(a) NEBRASKA ORTHOPEDIC HOSPITAL

**83-301 Repealed. Laws 1979, LB 80, § 116.**

**83-302 Repealed. Laws 1979, LB 80, § 116.**

**83-303 Repealed. Laws 1979, LB 80, § 116.**

**83-304 Repealed. Laws 1979, LB 80, § 116.**

**83-304.01 Repealed. Laws 1979, LB 80, § 116.**

(b) STATE HOSPITALS FOR THE MENTALLY ILL

**83-305 State hospitals for the mentally ill; official titles.**

The state hospital established in Lancaster County for the treatment of mental illnesses shall be known as the Lincoln Regional Center. The state hospital established in Madison County shall be known as the Norfolk Regional Center.

The state hospital established in Adams County shall be known as the Hastings Regional Center.

**Source:** Laws 1921, c. 162, § 1, p. 656; C.S.1922, § 6950; C.S.1929, § 83-755; Laws 1935, c. 185, § 3, p. 686; C.S.Supp.,1941, § 83-755; R.S.1943, § 83-305; Laws 1953, c. 345, § 1, p. 1120; Laws 1969, c. 818, § 11, p. 3119; Laws 1973, LB 536, § 4; Laws 1975, LB 466, § 2; Laws 1996, LB 1155, § 85; Laws 2004, LB 1083, § 129.

#### Cross References

**Convicted sex offenders**, evaluation and treatment, see section 29-2925 et seq.

**Mentally ill veterans**, care and treatment of, see Chapter 80, article 6.

**Mentally incompetent persons:**

Becoming incompetent after commission of crime, procedure, see section 29-1822.

Insanity as defense in criminal cases, procedure, see section 29-2203.

**State institutions**, official names, see section 83-107.01.

All hospitals for the insane of the state are governed by same general provisions. *State v. Gage County*, 100 Neb. 753, 161 N.W. 267 (1917).

### 83-305.01 Psychiatric services; administration.

Psychiatric services under the control of the Board of Regents of the University of Nebraska shall be under the jurisdiction of the Chancellor of the University of Nebraska Medical Center, who shall report to the Board of Regents through the President of the University of Nebraska. The chancellor or his or her designee shall be responsible for the administration and preparation of the psychiatric services budget and shall have the same powers, authority, and duties as prescribed for the chief executive officers of the state hospitals described in section 83-305.

**Source:** Laws 1953, c. 345, § 4, p. 1122; Laws 1975, LB 466, § 3; Laws 1987, LB 112, § 2; Laws 2004, LB 1083, § 130.

The transfer of control of the Nebraska Psychiatric Institute from the Department of Public Institutions did not impliedly repeal county liability under section 83-376 for patients treated at the Nebraska Psychiatric Institute. *County of Douglas v. Board of Regents*, 210 Neb. 573, 316 N.W.2d 62 (1982).

### 83-305.02 Psychiatric services; operation; laws governing.

The psychiatric services at the University of Nebraska Medical Center shall operate and be subject to sections 83-305 to 83-357.

**Source:** Laws 1953, c. 345, § 5, p. 1122; Laws 1987, LB 112, § 3.

### 83-305.03 University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense.

The Department of Health and Human Services or the Director of Correctional Services may order the temporary transfer of any person committed to the Department of Health and Human Services or the Department of Correctional Services to the University of Nebraska Medical Center with the concurrence of the chancellor thereof for special diagnosis and treatment of any illness such person may suffer which cannot be properly diagnosed or treated by the medical facilities of the institution of which he or she is a patient or inmate. The responsibility of guarding any such patient or inmate transferred shall remain with the institution of which he or she is a patient or inmate. The Department of Health and Human Services or the Department of Correctional Services shall pay, out of the proper account, all expenses incurred by the

University of Nebraska Medical Center on behalf of any patient or inmate so transferred by the respective department.

**Source:** Laws 1957, c. 389, § 1, p. 1348; Laws 1963, c. 528, § 5, p. 1657; Laws 1969, c. 817, § 75, p. 3109; Laws 1975, LB 466, § 4; Laws 1987, LB 112, § 4; Laws 1996, LB 1044, § 940; Laws 2007, LB296, § 786.

**83-305.04 Regional centers; rehabilitation model.**

The Department of Health and Human Services shall utilize a rehabilitation model when appropriate for services provided at the regional centers under the jurisdiction of the department. For purposes of this section, rehabilitation model means a comprehensive approach to treatment and rehabilitation of a person with a disability caused by a mental illness in order to assure that such person can perform those physical, emotional, social, and intellectual skills needed to live and work in the community.

**Source:** Laws 1996, LB 1155, § 81; Laws 1997, LB 307, § 222.

**83-305.05 Repealed. Laws 2004, LB 1083, § 149.**

**83-306 Repealed. Laws 2004, LB 1083, § 149.**

**83-307 Repealed. Laws 2004, LB 1083, § 149.**

**83-307.01 Repealed. Laws 2004, LB 1083, § 149.**

**83-307.02 Repealed. Laws 1969, c. 821, § 1.**

**83-307.03 Repealed. Laws 1969, c. 821, § 1.**

**83-308 Repealed. Laws 2004, LB 1083, § 149.**

**83-308.01 Repealed. Laws 1996, LB 1155, § 121.**

**83-308.02 Transferred to section 83-1071.**

**83-309 Repealed. Laws 1947, c. 335, § 47.**

**83-310 Repealed. Laws 1947, c. 335, § 47.**

**83-311 Repealed. Laws 2004, LB 1083, § 149.**

**83-312 Repealed. Laws 2004, LB 1083, § 149.**

**83-313 Department of Health and Human Services; trustee for state hospitals for the mentally ill.**

The Department of Health and Human Services shall hold in trust, for the state hospitals for the mentally ill, all real or personal property given or bequeathed, to be applied for any purpose connected with the institutions.

**Source:** G.S.1873, c. 31, § 7, p. 412; R.S.1913, § 7240; C.S.1922, § 6897; C.S.1929, § 83-702; R.S.1943, § 83-313; Laws 1947, c. 335, § 5, p. 1057; Laws 1996, LB 1044, § 943.

**83-314 State hospitals for the mentally ill; patients' correspondence; supplies; mailing; exception.**

Every patient in any state hospital for the mentally ill shall be allowed to write whenever the patient desires and to whomever the patient may choose, and the chief executive officer of the hospital, upon request, shall supply each patient, not otherwise supplied, with suitable writing materials and postage, at the expense of the state, sufficient for writing at least one letter per week. Such letters shall be regularly and promptly collected and shall be placed in the United States mail for delivery unless the chief executive officer of the hospital has on file a written request from a recipient or potential recipient that letters shall not be mailed to such recipient or unless there is reasonable cause to believe that the contents of any letter are threatening.

**Source:** Laws 1883, c. 49, § 1, p. 235; R.S.1913, § 7292; Laws 1915, c. 135, § 1, p. 300; C.S.1922, § 6947; C.S.1929, § 83-752; R.S. 1943, § 83-314; Laws 1947, c. 335, § 6, p. 1057; Laws 1976, LB 806, § 21; Laws 2004, LB 1083, § 131.

**83-315 Repealed. Laws 1976, LB 806, § 91.**

**83-316 Repealed. Laws 1947, c. 335, § 47.**

**83-317 Repealed. Laws 1976, LB 806, § 91.**

**83-318 Repealed. Laws 2004, LB 1083, § 149.**

**83-319 Repealed. Laws 1976, LB 806, § 91.**

**83-320 Repealed. Laws 1976, LB 806, § 91.**

**83-321 Repealed. Laws 2004, LB 1083, § 149.**

**83-322 Repealed. Laws 1976, LB 806, § 91.**

**83-322.01 Repealed. Laws 1976, LB 806, § 91.**

**83-323 Repealed. Laws 1976, LB 806, § 91.**

**83-323.01 Repealed. Laws 1976, LB 806, § 91.**

**83-324 Department; voluntary application for admission.**

The Department of Health and Human Services may accept patients for care and treatment upon the written application of a patient. Such written application may be made by persons desiring to receive care and treatment in one of the state hospitals for the mentally ill to the chief executive officer of the state hospital in which the patient wishes to receive treatment.

**Source:** Laws 1905, c. 82, § 3, p. 387; R.S.1913, § 7283; C.S.1922, § 6939; C.S.1929, § 83-744; R.S.1943, § 83-324; Laws 1947, c. 335, § 15, p. 1060; Laws 1969, c. 818, § 17, p. 3121; Laws 1976, LB 806, § 23; Laws 1996, LB 1155, § 88; Laws 1997, LB 307, § 224; Laws 2004, LB 1083, § 132; Laws 2007, LB296, § 787.

Application for admission as a dipsomaniac must be in writing in the nature of an information and verified by affidavit. In re Application of Cupita, 148 Neb. 555, 28 N.W.2d 149 (1947).

**83-324.01 Repealed. Laws 1953, c. 347, § 1.**

**83-325 Repealed. Laws 1976, LB 806, § 91.**

**83-325.01 Repealed. Laws 1976, LB 806, § 91.**

**83-325.02 Repealed. Laws 1976, LB 806, § 91.**

**83-325.03 Repealed. Laws 1976, LB 806, § 91.**

**83-325.04 Repealed. Laws 1976, LB 806, § 91.**

**83-326 Repealed. Laws 1976, LB 806, § 91.**

**83-327 Repealed. Laws 1976, LB 806, § 91.**

**83-328 Repealed. Laws 1976, LB 806, § 91.**

**83-328.01 Repealed. Laws 1976, LB 806, § 91.**

**83-328.02 Repealed. Laws 1976, LB 806, § 91.**

**83-328.03 Repealed. Laws 1976, LB 806, § 91.**

**83-329 Repealed. Laws 1969, c. 812, § 25.**

**83-329.01 Repealed. Laws 1969, c. 812, § 25.**

**83-329.02 Repealed. Laws 1969, c. 812, § 25.**

**83-329.03 Repealed. Laws 1969, c. 812, § 25.**

**83-329.04 Repealed. Laws 1969, c. 812, § 25.**

**83-330 Repealed. Laws 1947, c. 335, § 47.**

**83-331 Repealed. Laws 1947, c. 335, § 47.**

**83-332 Repealed. Laws 1976, LB 806, § 91.**

**83-333 Repealed. Laws 1976, LB 806, § 91.**

**83-334 Repealed. Laws 1976, LB 806, § 91.**

**83-335 Repealed. Laws 1976, LB 806, § 91.**

**83-336 Department; mental health board; forms; rules and regulations.**

The Department of Health and Human Services shall provide the mental health boards with blanks for warrants, certificates, and other forms, such as will enable them to comply with sections 83-313 to 83-357, and also with printed copies of the applicable rules and regulations of the department.

**Source:** G.S.1873, c. 31, § 55, p. 425; R.S.1913, § 7277; C.S.1922, § 6933; C.S.1929, § 83-738; R.S.1943, § 83-336; Laws 1947, c. 335, § 26, p. 1066; Laws 1969, c. 818, § 19, p. 3122; Laws 1996, LB 1155, § 89; Laws 1997, LB 307, § 225; Laws 2004, LB 1083, § 133; Laws 2007, LB296, § 788.

**83-337 Repealed. Laws 2004, LB 1083, § 149.**

**83-337.01 Repealed. Laws 1959, c. 266, § 1.**

**83-337.02 Repealed. Laws 1959, c. 266, § 1.**

**83-337.03 Repealed. Laws 1959, c. 266, § 1.****83-338 State hospitals for the mentally ill; order of admission when facilities are limited.**

If at any time it becomes necessary, for lack of capacity or other cause, to establish priorities for the admission of patients into the state hospitals for the mentally ill, the following priorities for admission shall be recognized: (1) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (2) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or by a district court; (3) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a mental health board or whether such patients seek voluntary admission to one of the state hospitals; and (4) when cases are equally meritorious, in all other respects, patients who are indigent.

**Source:** G.S.1873, c. 31, § 37, p. 420; R.S.1913, § 7263; C.S.1922, § 6920; C.S.1929, § 83-725; R.S.1943, § 83-338; Laws 1947, c. 335, § 28, p. 1068; Laws 2004, LB 1083, § 134; Laws 2006, LB 1199, § 100.

## Cross References

Sex Offender Commitment Act, see section 71-1201.

**83-339 Repealed. Laws 2004, LB 1083, § 149.****83-340 State hospitals for the mentally ill; voluntary patient; discharge; when.**

Any voluntary patient in a state hospital for the mentally ill who no longer meets the clinical and legal requirements for treatment at such hospital shall be discharged by the chief executive officer of such hospital.

**Source:** G.S.1873, c. 31, § 42, p. 421; R.S.1913, § 7268; C.S.1922, § 6923; C.S.1929, § 83-728; R.S.1943, § 83-340; Laws 1947, c. 335, § 30, p. 1068; Laws 1963, c. 526, § 9, p. 1652; Laws 1969, c. 818, § 21, p. 3122; Laws 1981, LB 95, § 3; Laws 1996, LB 1155, § 91; Laws 1997, LB 307, § 227; Laws 2004, LB 1083, § 135.

## Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

Any patient who is cured should be immediately discharged.  
State v. Noll, 171 Neb. 831, 108 N.W.2d 108 (1961).

**83-340.01 Transferred to section 71-936.****83-341 Repealed. Laws 1976, LB 806, § 91.****83-342 Repealed. Laws 1981, LB 95, § 30.****83-343 Repealed. Laws 1976, LB 806, § 91.****83-344 Repealed. Laws 1996, LB 1155, § 121.****83-345 Repealed. Laws 1969, c. 812, § 25.****83-346 Repealed. Laws 1947, c. 335, § 47.**

**83-347 Repealed. Laws 1969, c. 812, § 25.****83-348 State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense.**

Patients in the state hospitals for the mentally ill having no legal settlement in this state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state. This section shall apply to all such patients now in the hospitals and shall include expenses already incurred and remaining unpaid. The Department of Health and Human Services may authorize the removal of any such patient at the expense of the state.

**Source:** G.S.1873, c. 31, § 27, p. 417; R.S.1913, § 7254; C.S.1922, § 6911; C.S.1929, § 83-716; R.S.1943, § 83-348; Laws 1947, c. 335, § 36, p. 1071; Laws 1969, c. 818, § 22, p. 3123; Laws 1996, LB 1044, § 944; Laws 2007, LB296, § 789.

**83-349 State hospitals for the mentally ill; adjustment of expense between counties; notice; inquiry; effect of delay.**

If the mental health board finds that a person committed to a state hospital for the mentally ill by the board has, or probably has, a legal settlement in some other county in the state, the board shall immediately notify the mental health board of that county of its finding and commitment. The board members so notified shall thereupon inquire and ascertain, if possible, whether the patient has a legal settlement in their county and shall immediately notify the chief executive officer of the hospital and the board members of the county from which the patient was committed of the result of their inquiry. If the legal settlement of a patient cannot for a time be ascertained and is afterwards found, the notices provided for in this section shall then be given.

**Source:** G.S.1873, c. 31, § 24, p. 416; R.S.1913, § 7251; C.S.1922, § 6908; C.S.1929, § 83-713; R.S.1943, § 83-349; Laws 1947, c. 335, § 37, p. 1071; Laws 2004, LB 1083, § 136.

Notice is required to be given after commitment and not before. *County of Kearney v. County of Buffalo*, 167 Neb. 117, 91 N.W.2d 304 (1958).

Legal settlement of an insane person is the political subdivision primarily liable for his support. *Clay County v. Adams County*, 69 Neb. 106, 95 N.W. 58 (1903).

**83-350 State hospitals for the mentally ill; legal settlement of patient in another county; treatment.**

When the chief executive officer of a state hospital for the mentally ill has been notified, as provided for in sections 83-313 to 83-357, that a patient sent to the hospital from one county has a legal settlement in another county of the state, the chief executive officer shall thereafter hold and treat such patient as from the latter county.

**Source:** G.S.1873, c. 31, § 25, p. 417; R.S.1913, § 7252; C.S.1922, § 6909; C.S.1929, § 83-714; R.S.1943, § 83-350; Laws 1947, c. 335, § 38, p. 1072; Laws 1969, c. 812, § 23, p. 3058; Laws 2004, LB 1083, § 137.

County of legal settlement means the county in which a person had a residence at the time of becoming incompetent.

*County of Kearney v. County of Buffalo*, 167 Neb. 117, 91 N.W.2d 304 (1958).

**83-351 Expenses; adjustment between counties; patients transferred from a state institution.**

Expenses incurred by one county, on account of a mentally ill and dangerous person or a dangerous sex offender as defined in section 83-174.01 whose legal

settlement is in another county of the state, shall be refunded, with lawful interest thereon, by the county in which the mentally ill and dangerous person or dangerous sex offender has his or her legal settlement. Such expenses shall be presented to the county board of the county sought to be charged, which shall allow and pay them the same as other claims. Whenever a patient of any facility over which the Department of Health and Human Services has control has been adjudicated a mentally ill and dangerous person or a dangerous sex offender as defined in section 83-174.01 and committed to a state hospital for the mentally ill, and the expenses of the adjudication and commitment have been paid by the county in which the institution is located, the county clerk of that county shall certify the total amount of the expenses thus incurred to the Department of Health and Human Services. The department shall audit the expenses so certified and shall file a statement of the amount found due with the Director of Administrative Services, and a warrant shall be drawn on the General Fund in favor of the county from which the mentally ill and dangerous person or dangerous sex offender was committed.

**Source:** G.S.1873, c. 31, § 26, p. 417; R.S.1913, § 7253; Laws 1919, c. 100, § 1, p. 252; C.S.1922, § 6910; C.S.1929, § 83-715; R.S. 1943, § 83-351; Laws 1947, c. 335, § 39, p. 1072; Laws 1976, LB 806, § 26; Laws 1996, LB 1044, § 945; Laws 2004, LB 1083, § 138; Laws 2006, LB 1199, § 101.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

**83-352 Repealed. Laws 1969, c. 812, § 25.**

**83-352.01 Repealed. Laws 1969, c. 812, § 25.**

**83-352.02 Repealed. Laws 2004, LB 1083, § 149.**

**83-353 Repealed. Laws 1947, c. 335, § 47.**

**83-354 State hospitals for the mentally ill; equal treatment; special care at private expense.**

All patients in the state hospitals for the mentally ill shall be regarded as standing on an equal footing. The patients, according to their different conditions of mind and body and their respective needs, shall be provided for and treated with equal care. If the relatives or immediate friends of any patient desire special care and pay the expenses thereof, such patient shall have special care and shall be provided with a special attendant as may be agreed upon with the chief executive officer. In such cases the charges for the special care and attendance shall be paid quarterly in advance.

**Source:** G.S.1873, c. 31, § 28, p. 417; R.S.1913, § 7255; C.S.1922, § 6912; C.S.1929, § 83-717; R.S.1943, § 83-354; Laws 1947, c. 335, § 41, p. 1073; Laws 2004, LB 1083, § 139.

**83-355 State hospitals for the mentally ill; admission of nonresidents; expenses paid quarterly in advance.**

Mentally ill persons from other states and territories may be admitted to the state hospitals for the mentally ill upon equal footing and on same conditions as private-pay patients. The sum to be paid monthly for the care, maintenance, and treatment of such patients shall be fixed by the Department of Health and

Human Services and shall be collected quarterly in advance by the stewards of the hospitals and accounted for the same as other funds in their hands belonging to the State of Nebraska.

**Source:** G.S.1873, c. 31, § 57, p. 425; R.S.1913, § 7279; C.S.1922, § 6935; C.S.1929, § 83-740; R.S.1943, § 83-355; Laws 1947, c. 335, § 42, p. 1073; Laws 1996, LB 1044, § 946.

**83-356 Mentally ill persons; mistreatment; liability; penalty.**

Any person taking care of a mentally ill person, and restraining such a person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such a person, shall be guilty of a Class V misdemeanor and shall also be liable in an action for all damages sustained by such mentally ill person.

**Source:** G.S.1873, c. 31, § 34, p. 418; R.S.1913, § 7261; C.S.1922, § 6918; C.S.1929, § 83-723; R.S.1943, § 83-356; Laws 1947, c. 335, § 43, p. 1074; Laws 1959, c. 442, § 9, p. 1490; Laws 1977, LB 39, § 312.

This section does not create a criminal offense for lack of a penalty. Redding v. State, 165 Neb. 307, 85 N.W.2d 647 (1957).

**83-357 Persons supposed mentally ill; liberty not to be restricted; exception.**

The liberty of any person supposed to be mentally ill shall not be restrained by any person not acting under the authority of the county board of mental health except to the extent for the period that may be necessary for the safety of persons and property, and until authority can be obtained.

**Source:** G.S.1873, c. 31, § 33, p. 418; R.S.1913, § 7260; C.S.1922, § 6917; C.S.1929, § 83-722; R.S.1943, § 83-357; Laws 1947, c. 335, § 44, p. 1074.

**83-358 Repealed. Laws 1969, c. 817, § 87.**

**83-359 Repealed. Laws 1963, c. 528, § 12.**

**83-360 Repealed. Laws 1963, c. 528, § 12.**

**83-360.01 Repealed. Laws 1969, c. 821, § 1.**

**83-360.02 Repealed. Laws 1969, c. 821, § 1.**

**83-360.03 Repealed. Laws 1969, c. 821, § 1.**

**83-360.04 Repealed. Laws 1969, c. 821, § 1.**

(c) NEBRASKA HOSPITAL FOR THE TUBERCULOUS

**83-361 Repealed. Laws 1972, LB 1492, § 8.**

**83-362 Repealed. Laws 1972, LB 1492, § 8.**

(d) COST OF PATIENT CARE

**83-363 Terms, defined.**

As used in sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, unless the context otherwise requires:

- (1) Department means the Department of Health and Human Services;
- (2) State institution means the state hospitals at Lincoln, Norfolk, and Hastings, the Beatrice State Developmental Center, and such other institutions as may hereafter be established by the Legislature for the care and treatment of persons with a mental disorder or mental retardation;
- (3) Relative means the spouse of a patient or, if the patient has no spouse and is under the age of majority at the time he or she is admitted, the parents of a patient in a state institution; and
- (4) Parents means either or both of a patient's natural parents unless such patient has been legally adopted by other parents, in which case parents means either or both of the adoptive parents.

**Source:** Laws 1969, c. 812, § 1, p. 3051; Laws 1975, LB 466, § 6; Laws 1986, LB 1177, § 46; Laws 1996, LB 1044, § 947; Laws 2007, LB296, § 790.

### **83-364 Cost of patient care; liability of patient and relatives.**

When any person is admitted to a state institution or other inpatient treatment facility pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or receives treatment prescribed by such institution or facility following release or without being admitted as a resident patient, the patient and his or her relatives shall be liable for the cost of the care, support, maintenance, and treatment of such person to the extent and in the manner provided by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. The provisions of such sections also shall apply to persons admitted to a state institution as transferees from any state penal institution or the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva but only after the expiration of the time for which the transferees were originally sentenced or committed.

**Source:** Laws 1969, c. 812, § 2, p. 3052; Laws 1994, LB 988, § 30; Laws 2004, LB 1083, § 140; Laws 2006, LB 1199, § 102.

#### **Cross References**

For other provisions relating to patient expenses, see sections 83-348 to 83-355.  
 Nebraska Mental Health Commitment Act, see section 71-901.  
 Sex Offender Commitment Act, see section 71-1201.

### **83-365 Cost of patient care; department; determine.**

The department shall periodically determine the individual cost, exclusive of the cost of education, for the care, support, maintenance, and treatment of the patients in each state institution and for persons receiving treatment prescribed by an institution following release or without being admitted as a resident patient. In making such determinations, the department may use averaging methods for each institution if, in the judgment of the department, it is not practicable to compute the cost for each patient. The cost of capital expenditures and capital construction shall not be included in making such determinations.

**Source:** Laws 1969, c. 812, § 3, p. 3052; Laws 1996, LB 1044, § 948; Laws 2007, LB296, § 791.

### **83-366 Cost of patient care; assess against patient or relatives; limitations.**

The department shall assess against the patient or his or her relatives all or such part of the cost determined under section 83-365 as they are able to pay, in the judgment of the department, except that a patient who is placed in a state institution to receive appropriate special education pursuant to the Special Education Act or his or her relatives shall be assessed only for medical care and medical treatment costs as determined pursuant to rules and regulations adopted and promulgated by the department in accordance with section 83-371.

**Source:** Laws 1969, c. 812, § 4, p. 3052; Laws 1985, LB 518, § 8; Laws 1987, LB 367, § 73; Laws 2007, LB296, § 792.

**Cross References**

**Special Education Act**, see section 79-1110.

**83-367 Cost of patient care; relatives; limitation.**

The liability of each relative, except a spouse, shall cease when relatives shall have completed payments assessed pursuant to sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 for one hundred eighty months, or when the patient attains the age of majority, whichever shall occur first.

**Source:** Laws 1969, c. 812, § 5, p. 3053; Laws 1976, LB 620, § 1.

**83-368 Cost of patient care; ability to pay; factors.**

The department shall determine the ability of a patient to pay by consideration of the following factors: (1) Taxable income reportable under Nebraska law; (2) the patient's age; (3) the number of his or her dependents and their ages and mental and physical conditions; (4) the patient's length of care or treatment; (5) his or her liabilities; and (6) his or her assets including health insurance coverage.

**Source:** Laws 1969, c. 812, § 6, p. 3053; Laws 1985, LB 487, § 2.

**83-369 Cost of patient care; Department of Health and Human Services; determination of ability to pay; factors considered.**

When the department determines that a patient is unable to pay the entire cost determined pursuant to section 83-365, the department shall then determine the ability of his relatives to pay such cost. In making this determination, the department shall consider the relative's taxable income reportable under Nebraska law, and the patient's length of care and treatment. At the request of the relative, the department also shall consider other relevant factors in the interest of avoiding undue hardship. Such factors may include the relative's age, provision for his retirement years, his assets, his liabilities, the number of his dependents, and their mental and physical condition and educational requirements.

**Source:** Laws 1969, c. 812, § 7, p. 3053.

**83-370 Cost of patient care; failure to furnish information; effect.**

When any relative willfully fails to furnish to the department, upon request, the information required by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 as to his taxable income, such relative shall be deemed to have ability

to pay the entire cost determined under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380.

**Source:** Laws 1969, c. 812, § 8, p. 3053.

The presumption of ability to pay under this section does not extend to a patient who fails to provide the necessary financial information. The Department of Public Institutions was without authority to fashion such a rule. *State ex rel. Spire v. Stodola*, 228 Neb. 107, 421 N.W.2d 436 (1988).

### **83-371 Department; rules and regulations; adopt.**

Pursuant to the provisions of the Administrative Procedure Act, the department shall adopt appropriate rules and regulations for making the determinations required by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380.

**Source:** Laws 1969, c. 812, § 9, p. 3053.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

### **83-372 Cost of patient care; county board; duties.**

It shall be the duty of the county board in each county to make such investigation as the department may require with regard to the ability to pay of any patient or relative of a patient who resides within the county. In making such investigation, the county board shall act in accordance with the rules and regulations of the department and shall promptly submit the required information to the department.

**Source:** Laws 1969, c. 812, § 10, p. 3053; Laws 1989, LB 32, § 2.

### **83-373 Cost of patient care; determination; redetermination annually.**

Any determination of the ability of a patient or relative to pay shall remain in effect until a redetermination is made. A redetermination shall be made annually and at such additional times when, in the judgment of the department, it is appropriate to do so, or when a request is made by the patient or relative who is liable for the payments.

**Source:** Laws 1969, c. 812, § 11, p. 3054; Laws 2007, LB296, § 793.

### **83-374 Cost of patient care; hearing; appeal.**

Any patient or relative aggrieved by a determination of ability to pay may request a hearing before the department. The department shall adopt and promulgate rules and regulations to govern the conduct of such hearings. The department may appoint an examiner who shall have power to preside at such hearing, administer oaths, examine witnesses, and take testimony and shall report the same to the department. Such hearings shall be held in the county in which the person requesting the hearing resides, if such person so requests, in which event it shall be the duty of the county board to attend such hearing. The department shall deliver the decision within sixty days after the conclusion of the hearing. Any patient or relative aggrieved by a decision following a hearing may appeal such decision, and such appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 812, § 12, p. 3054; Laws 1988, LB 352, § 183; Laws 1989, LB 32, § 3; Laws 2007, LB296, § 794.

## Cross References

*Administrative Procedure Act*, see section 84-920.

**83-375 Cost of patient care; failure to pay; action by Attorney General.**

When any patient or relative fails to pay the amounts determined to be due under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, the state of Nebraska may proceed against such person in the manner authorized by law for the recovery of money owed to a creditor. The Attorney General shall represent the state in such actions, but may authorize the county attorney for the county in which such person resides or owns property to investigate and prosecute the action on behalf of the state.

**Source:** Laws 1969, c. 812, § 13, p. 3054.

**83-376 Cost of patient care; failure of patient or relative to pay; cost to be paid by county and state.**

When the full cost determined to be necessary for the care, support, maintenance, and treatment of any patient is not paid by the patient or his or her relatives within thirty days of receipt of such care, (1) the county in which the patient resides shall pay (a) the first fifteen dollars per day of the unpaid cost for each of the first thirty days at the Hastings Regional Center, the Lincoln Regional Center, the Norfolk Regional Center, or other inpatient treatment facility where the patient is receiving inpatient treatment pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, (b) the first ten dollars per day of the unpaid cost for each of the first thirty days at the Beatrice State Developmental Center, and (c) the first three dollars per day of the unpaid costs for each day after the first thirty days at any such institution, (2) the balance of the unpaid cost shall be borne by the state, and (3) the county in which the patient resides shall be credited by the department for amounts collected from such patient or his or her relatives in excess of the portion of such costs borne by the state.

**Source:** Laws 1969, c. 812, § 14, p. 3055; Laws 1971, LB 1012, § 1; Laws 1987, LB 112, § 5; Laws 1996, LB 1044, § 949; Laws 2004, LB 1083, § 141; Laws 2006, LB 1199, § 103; Laws 2007, LB296, § 795.

## Cross References

*Nebraska Mental Health Commitment Act*, see section 71-901.

*Sex Offender Commitment Act*, see section 71-1201.

The transfer of control of the Nebraska Psychiatric Institute from the Department of Public Institutions did not impliedly repeal county liability under section 83-376 for patients treated at the Nebraska Psychiatric Institute. County of Douglas v. Board of Regents, 210 Neb. 573, 316 N.W.2d 62 (1982).

**83-377 Cost of patient care; guardian; duties; liability.**

In all cases in which a guardian has been named for any person liable for payments under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, the guardian shall represent such person in all matters arising under sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380 and shall be liable in the same manner as he would be on any other matters arising from the guardianship.

**Source:** Laws 1969, c. 812, § 15, p. 3055.

**83-378 Cost of patient care; claim against estate; voluntary payments.**

No person shall be liable for the cost of the care, support, maintenance, and treatment of any patient except as provided in sections 83-363 to 83-380, but the amounts determined to be due and unpaid at the time of the death of a patient or relative shall constitute a claim against the estate of such patient or relative. The department may accept voluntary payments on behalf of any patient from any person who is not liable for payments.

**Source:** Laws 1969, c. 812, § 16, p. 3055; Laws 1992, LB 858, § 6.

**83-379 Cost of patient care; fraudulent transfers; effect.**

In the absence of fraud, a patient and his relatives shall be liable only to the extent of assessments actually made against them respectively, in accordance with sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. For the purposes of sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, it shall be deemed fraudulent for any patient or his relatives to transfer any assets or property to another person for the purpose of affecting the determination of ability to pay. When it is determined that such a fraudulent transfer has been made, the department shall consider the value of such assets or property transferred in determining the ability to pay under section 83-368 or 83-369.

**Source:** Laws 1969, c. 812, § 17, p. 3055; Laws 2007, LB296, § 796.

**83-380 Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state.**

Within thirty days after June 30, 1971, and each year thereafter the department shall certify to the Director of Administrative Services all amounts not previously certified due to each state institution from the several counties having patients chargeable thereto. The Director of Administrative Services shall thereupon notify the county clerk of each county of the amount each county owes. The county board shall add to its next levy an amount sufficient to raise the amount certified as due. The county shall pay the amount certified into the state treasury on or before the next June 1 following such certification.

From any county which fails to pay the total amount certified as due annually by the next June 1 following certification, there shall be withheld by the State Treasurer from the next allocation to such county due under the provisions of section 77-27,137, an amount sufficient to equal the amount unpaid from such county which amount shall be deducted from the county's portion and not the municipalities' under section 77-27,137.01. The State Treasurer shall credit the amount withheld the same as if the county had paid it when due as above provided.

**Source:** Laws 1969, c. 812, § 18, p. 3056; Laws 1971, LB 1012, § 2; Laws 1996, LB 1044, § 950; Laws 2007, LB296, § 797.

**83-380.01 Indigent outpatient; prescription medicine; Department of Health and Human Services; pay costs; when.**

Upon the discharge from a treatment facility, an indigent person who has received mental-health-board-ordered treatment may file an affidavit with the Department of Health and Human Services or the mental health board requesting that prescription medicine which the regional center treating psychiatrist or the patient's treating physician has prescribed as necessary for the patient's mental health treatment be provided to him or her. Such affidavit shall include

the following: (1) That the patient qualifies as an indigent person who is unable to pay under the same standards of ability to pay as set forth in sections 83-363 to 83-380; and (2) that such prescription medicine has been prescribed by the regional center's treatment psychiatrist or the patient's treating physician as necessary for the patient's mental health treatment. The mental health board shall refer such requests it receives to the Department of Health and Human Services and the department shall provide such prescription medicine as may be necessary for such former patient's mental health treatment so long as he or she remains an outpatient and his or her treating physician continues to prescribe and certify that such prescription medicine is necessary for the patient's mental health treatment and he or she continues to be an indigent person as determined under the same standards of ability to pay as set forth in sections 83-363 to 83-380. The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the provisions of this section in accordance with the Administrative Procedure Act, including, but not limited to, hearings necessary to determine whether such person is qualified to receive such medications and whether such medication is necessary for the patient's mental health treatment.

**Source:** Laws 1981, LB 95, § 25; Laws 1996, LB 1044, § 951.

Cross References

Administrative Procedure Act, see section 84-920.

(e) RESIDENTIAL FACILITIES

**83-381 Terms, defined.**

As used in sections 83-217, 83-218, and 83-381 to 83-390, unless the context otherwise requires:

(1) Person with mental retardation means any person of subaverage general intellectual functioning which is associated with a significant impairment in adaptive behavior;

(2) Department means the Department of Health and Human Services or such person or agency within the Department of Health and Human Services as the chief executive officer of the department may designate; and

(3) Residential facility means an institution specified under section 83-217 to provide residential care by the State of Nebraska for persons with mental retardation.

**Source:** Laws 1969, c. 816, § 1, p. 3064; Laws 1986, LB 1177, § 47; Laws 1996, LB 1044, § 952; Laws 2007, LB296, § 798.

**83-382 Residential facilities; admission; department; jurisdiction.**

Except as provided in sections 79-1148 and 79-1149, the department shall have jurisdiction of the admission of persons with mental retardation to a residential facility. Applications for admission to a residential facility shall be filed with the department.

**Source:** Laws 1969, c. 816, § 2, p. 3064; Laws 1981, LB 499, § 42; Laws 1986, LB 1177, § 48; Laws 1987, LB 367, § 74; Laws 1996, LB 900, § 1067; Laws 1996, LB 1044, § 953; Laws 2007, LB296, § 799.

**83-383 Residential facilities; admission; application; by whom; appointment of guardian.**

(1) An application for admission shall be made in writing by one of the following persons:

(a) If the person applying for admission has a court-appointed guardian, the application shall be made by the guardian; and

(b) If the person applying for admission does not have a court-appointed guardian and has not reached the age of majority, as established by section 43-2101, as such section may from time to time be amended, the application shall be made by both parents if they are living together or by the parent having custody of such person if both parents are not then living or are not then living together.

(2) The county court of the county of residence of any person with mental retardation or the county court of the county in which a state residential facility is located shall have authority to appoint a guardian for any person with mental retardation upon the petition of the husband, wife, parent, person standing in loco parentis to such person, a county attorney, or any authorized official of the department. If the guardianship proceedings are initiated by an official of the department, the costs thereof may be taxed to and paid by the department if the person with mental retardation is without means to pay the costs. The department shall pay such costs upon presentation of a proper claim by the judge of the county court in which the proceedings were initiated. The costs of such proceedings shall include court costs, attorneys' fees, sheriffs' fees, psychiatric fees, and other necessary expenses of the guardianship.

**Source:** Laws 1969, c. 816, § 3, p. 3064; Laws 1982, LB 264, § 1; Laws 1986, LB 1177, § 49; Laws 1988, LB 790, § 36; Laws 1996, LB 1044, § 954; Laws 2007, LB296, § 800.

**83-384 Residential facilities; application for admission; contents.**

An application for admission to a residential facility shall contain the name, age, and place of residence of the person for whom admission is requested. The application shall set forth the name of the person submitting the application and the capacity in which he or she makes the application. The application shall contain authorization for the department to obtain all relevant medical records and information concerning the person for whom admission is requested.

**Source:** Laws 1969, c. 816, § 4, p. 3065; Laws 2007, LB296, § 801.

**83-385 Residential facilities; application for admission; referral; return of findings.**

Upon receipt of an application for admission, the department shall refer the person for whom admission is requested to an agency or person specially qualified in the diagnosis of mental or related conditions for examination and evaluation. Within fourteen days of referral, the agency or person making such examination and evaluation shall return the findings of the examination and evaluation to the department. The findings and evaluation may also include recommendations with respect to the placement of the person for whom

admission is requested in a residential facility. The department may require further examination of the person for whom admission is requested.

**Source:** Laws 1969, c. 816, § 5, p. 3065; Laws 2007, LB296, § 802.

**83-386 Residential facilities; admission; selection by department; priority.**

The department shall examine all information concerning the person for whom admission is requested and shall determine therefrom whether the person is a person with mental retardation and whether residence in the residential facility is necessary for the welfare, care, treatment, or training of such person. Such determination shall be made in writing and shall set forth the reasons for the determination. If at any time it shall become necessary, for want of room or other cause, to discriminate in the admission of persons with mental retardation to residential facilities, the selection shall be made as follows: (1) Persons whose care is necessary in order to protect themselves or the public health and safety; (2) persons who are most likely to be benefited thereby; (3) persons shall next be admitted in the order in which their applications for admission have been filed with the department; and (4) when cases are equally meritorious in all other respects, an indigent person or a person from an indigent family shall be given preference.

**Source:** Laws 1969, c. 816, § 6, p. 3065; Laws 1986, LB 1177, § 50; Laws 2007, LB296, § 803.

**83-387 Residential facilities; patient; discharge or transfer; notice; responsibility of department.**

At such time as the department determines that continued residence in a residential facility will no longer benefit a person with mental retardation, the department shall arrange for the discharge or transfer of such person from the residential facility. The department shall give reasonable notice to the person authorized to make an application for admission for such person under subsection (1) of section 83-383 that the department intends to discharge or transfer such person. The department shall also be responsible for the placement of such person in any other available program or facility and in the development of other methods for the care, treatment, and training of such person.

**Source:** Laws 1969, c. 816, § 7, p. 3066; Laws 1986, LB 1177, § 51; Laws 2007, LB296, § 804.

**83-388 Residential facilities; detention after the age of majority.**

No person admitted to a residential facility upon the application of his or her parent or parents shall be detained in a residential facility after attaining the age of majority as established by section 43-2101, as such section may from time to time be amended, unless a guardian for such person makes an application for continued residence for such person in the facility under section 83-383 or such person is committed as provided by law for involuntary commitments.

**Source:** Laws 1969, c. 816, § 8, p. 3066; Laws 1981, LB 499, § 43; Laws 1982, LB 264, § 2; Laws 1988, LB 790, § 37.

**83-389 Residential facility; person with mental retardation; removal; notice; procedure.**

A person admitted to a residential facility under the provisions of sections 83-217, 83-218, and 83-381 to 83-390 shall be immediately discharged from the residential facility after notice of intention to remove the person with mental retardation has been given by the person authorized to make an application for admission under subsection (1) of section 83-383 and the normal discharge procedures are completed.

**Source:** Laws 1969, c. 816, § 9, p. 3066; Laws 1986, LB 1177, § 52.

**83-390 Residential facilities; persons admitted; rights retained; rules and regulations.**

A person shall not lose his or her rights as a citizen, his or her property rights, or his or her legal capacity by reason of being admitted to a residential facility. The department may make reasonable rules and regulations concerning the exercise of such rights within the residential facility. Every person admitted to a residential facility under sections 83-217, 83-218, and 83-381 to 83-390 shall have an absolute right to communicate with the department, any court, a member of his or her family who does not file a written objection thereto with the department, a physician, or an attorney and to be visited at any reasonable hour by a physician or attorney. The department may make reasonable rules and regulations concerning communication by letter or otherwise with any other person or agency and concerning the right to receive other visitors.

**Source:** Laws 1969, c. 816, § 10, p. 3067; Laws 2007, LB296, § 805.

(f) SKILLED NURSING CARE AND INTERMEDIATE CARE

**83-391 Terms, defined.**

For purposes of sections 83-108 and 83-391 to 83-393, unless the context otherwise requires:

- (1) Department means the Department of Health and Human Services; and
- (2) Facility means a skilled nursing care or intermediate care facility.

**Source:** Laws 1973, LB 536, § 1; Laws 1996, LB 1044, § 955; Laws 1996, LB 1155, § 92.

**83-392 Skilled nursing care; intermediate care; facilities; establish; operate; administered; license.**

The department may establish, operate, and administer skilled nursing care and intermediate care facilities. No such facility shall be established, operated, or administered without having complied with the laws, rules, and regulations establishing standards for construction, maintenance, and operation of such facilities and the care of persons in such facilities, and no such facility shall be established, operated, or administered without a license pursuant to the Health Care Facility Licensure Act.

**Source:** Laws 1973, LB 536, § 5; Laws 2000, LB 819, § 159.

Cross References

Health Care Facility Licensure Act, see section 71-401.

**83-393 Persons needing care; admission.**

Any person who needs the care provided in a facility shall be eligible for admission to such facility, and admission shall not be restricted to persons who receive services in any other institution operated by the department at the time application is made.

**Source:** Laws 1973, LB 536, § 6.

#### ARTICLE 4 PENAL AND CORRECTIONAL INSTITUTIONS

##### Cross References

**Assisting in the escape of prisoners**, see sections 28-912 and 28-913.

**Committal of prisoners after sentence**, see sections 29-2401 and 29-2402.

**Confinement of children**, see Nebraska Juvenile Code, section 43-2,129.

**Custody and maintenance of prisoners**, see section 29-1001.

**Escaping from detention**, see section 28-912.

**Sentences for felonies**, provisions of, see section 29-2204.

#### (a) GENERAL PROVISIONS

Section	
83-401.	Repealed. Laws 1963, c. 528, § 12.
83-402.	Repealed. Laws 1969, c. 817, § 87.
83-403.	Repealed. Laws 1969, c. 817, § 87.
83-404.	Repealed. Laws 1969, c. 817, § 87.
83-405.	Repealed. Laws 1969, c. 817, § 87.
83-406.	Repealed. Laws 1969, c. 817, § 87.
83-407.	Repealed. Laws 1969, c. 817, § 87.
83-408.	Repealed. Laws 1969, c. 817, § 87.
83-409.	Repealed. Laws 1980, LB 592, § 1.
83-410.	Repealed. Laws 1969, c. 817, § 87.
83-411.	Repealed. Laws 1969, c. 817, § 87.
83-412.	Repealed. Laws 1969, c. 817, § 87.
83-413.	Repealed. Laws 1969, c. 817, § 87.
83-414.	Repealed. Laws 1969, c. 817, § 87.
83-415.	Department of Correctional Services; violence; suppression.
83-416.	Repealed. Laws 1969, c. 817, § 87.
83-417.	Department of Correctional Services; employees; certain acts prohibited; violation; penalty.
83-418.	Repealed. Laws 1969, c. 817, § 87.
83-419.	Repealed. Laws 1969, c. 817, § 87.
83-420.	Federal prisoners; expenses.
83-421.	Repealed. Laws 1969, c. 817, § 87.
83-422.	Delivering prisoners to chief executive officer; documents.
83-423.	Costs; transporting prisoners; returning fugitives from justice; counties to pay.
83-424.	Fees and expenses; transporting prisoners; mileage; paid by county where crime was committed; amounts.
83-425.	Repealed. Laws 1969, c. 817, § 87.
83-426.	Repealed. Laws 1969, c. 817, § 87.
83-427.	Adult facility; escapee.
83-428.	Repealed. Laws 1993, LB 31, § 83.
83-429.	Repealed. Laws 1969, c. 817, § 87.
83-430.	Repealed. Laws 1969, c. 817, § 87.
83-431.	Repealed. Laws 1969, c. 817, § 87.
83-432.	Repealed. Laws 1969, c. 817, § 87.
83-432.01.	Expiration of act.
83-432.02.	Expiration of act.
83-432.03.	Expiration of act.
83-432.04.	Expiration of act.
83-432.05.	Expiration of act.
83-433.	Repealed. Laws 1969, c. 817, § 87.
83-434.	Repealed. Laws 1969, c. 817, § 87.

## PENAL AND CORRECTIONAL INSTITUTIONS

Section	
83-435.	Repealed. Laws 1969, c. 817, § 87.
83-436.	Repealed. Laws 1969, c. 817, § 87.
83-437.	Repealed. Laws 1969, c. 817, § 87.
83-438.	Repealed. Laws 1969, c. 817, § 87.
83-439.	Repealed. Laws 1969, c. 817, § 87.
83-440.	Repealed. Laws 1969, c. 817, § 87.
83-440.01.	Repealed. Laws 1969, c. 817, § 87.
83-440.02.	Repealed. Laws 1969, c. 817, § 87.
83-440.03.	Repealed. Laws 1969, c. 817, § 87.
83-440.04.	Repealed. Laws 1969, c. 817, § 87.
83-440.05.	Repealed. Laws 1969, c. 817, § 87.
83-441.	Repealed. Laws 1969, c. 817, § 87.
83-442.	Repealed. Laws 1969, c. 817, § 87.
83-443.	Financial interest in inmate labor prohibited; violation; penalty.
83-444.	Department officers and employees; interest in prison work prohibited.
83-445.	Repealed. Laws 1969, c. 817, § 87.
83-446.	Repealed. Laws 1963, c. 528, § 12.
83-447.	Repealed. Laws 1963, c. 528, § 12.
83-448.	Repealed. Laws 1969, c. 817, § 87.
83-449.	Repealed. Laws 1969, c. 817, § 87.
83-450.	Repealed. Laws 1969, c. 817, § 87.
83-451.	Repealed. Laws 1969, c. 817, § 87.
83-452.	Repealed. Laws 1969, c. 817, § 87.
83-453.	Repealed. Laws 1969, c. 817, § 87.
83-454.	Howard's Day; observance in all state penal and reformatory institutions.

### (b) STATE REFORMATORY

83-455.	Repealed. Laws 1969, c. 817, § 87.
83-456.	Repealed. Laws 1963, c. 528, § 12.
83-457.	Repealed. Laws 1963, c. 528, § 12.
83-458.	Repealed. Laws 1963, c. 528, § 12.
83-459.	Repealed. Laws 1963, c. 528, § 12.
83-460.	Repealed. Laws 1963, c. 528, § 12.
83-461.	Repealed. Laws 1963, c. 528, § 12.
83-462.	Repealed. Laws 1963, c. 528, § 12.

### (c) YOUTH REHABILITATION AND TREATMENT CENTERS

83-463.	Repealed. Laws 1969, c. 817, § 87.
83-464.	Repealed. Laws 1969, c. 817, § 87.
83-465.	Repealed. Laws 1998, LB 1073, § 179.
83-466.	Repealed. Laws 1993, LB 31, § 83.
83-467.	Repealed. Laws 1998, LB 1073, § 179.
83-468.	Repealed. Laws 1998, LB 1073, § 179.
83-469.	Repealed. Laws 1998, LB 1073, § 179.
83-470.	Repealed. Laws 1998, LB 1073, § 179.
83-471.	Repealed. Laws 1998, LB 1073, § 179.
83-472.	Transferred to section 43-412.
83-473.	Transferred to section 28-912.01.
83-473.01.	Repealed. Laws 1998, LB 1073, § 179.
83-474.	Repealed. Laws 1969, c. 817, § 87.
83-474.01.	Repealed. Laws 1998, LB 1073, § 179.
83-475.	Repealed. Laws 1953, c. 351, § 1.
83-476.	Repealed. Laws 1953, c. 351, § 1.
83-477.	Repealed. Laws 1953, c. 351, § 1.
83-478.	Repealed. Laws 1953, c. 351, § 1.
83-479.	Repealed. Laws 1953, c. 351, § 1.
83-480.	Repealed. Laws 1969, c. 817, § 87.
83-481.	Repealed. Laws 1969, c. 817, § 87.
83-482.	Repealed. Laws 1983, LB 44, § 1.
83-483.	Repealed. Laws 1969, c. 817, § 87.
83-484.	Repealed. Laws 1969, c. 817, § 87.

## STATE INSTITUTIONS

### Section

- 83-485. Repealed. Laws 1969, c. 817, § 87.
- 83-486. Repealed. Laws 1969, c. 817, § 87.
- 83-487. Repealed. Laws 1998, LB 1073, § 179.
- 83-488. Repealed. Laws 1969, c. 817, § 87.
- 83-489. Repealed. Laws 1951, c. 331, § 1.
- 83-490. Transferred to section 83-473.01.

### (d) GENOA STATE FARM

- 83-491. Repealed. Laws 1951, c. 332, § 3.
- 83-492. Repealed. Laws 1949, c. 291, § 5.
- 83-493. Repealed. Laws 1949, c. 291, § 5.

### (e) CENTRAL RECEPTION CENTER

- 83-494. Repealed. Laws 1969, c. 817, § 87.
- 83-495. Repealed. Laws 1969, c. 817, § 87.
- 83-496. Repealed. Laws 1969, c. 817, § 87.
- 83-497. Repealed. Laws 1969, c. 817, § 87.
- 83-498. Repealed. Laws 1969, c. 817, § 87.
- 83-499. Repealed. Laws 1969, c. 817, § 87.

### (f) YOUTH DIAGNOSTIC AND REHABILITATION CENTER

- 83-4,100. Repealed. Laws 1997, LB 307, § 236.
- 83-4,101. Transferred to section 43-413.
- 83-4,102. Transferred to section 43-414.
- 83-4,103. Repealed. Laws 1998, LB 1073, § 179.
- 83-4,104. Transferred to section 43-415.
- 83-4,104.01. Repealed. Laws 1996, LB 1141, § 3.

### (g) COMPREHENSIVE PENAL REFORM PLAN

- 83-4,105. Repealed. Laws 1981, LB 545, § 52.
- 83-4,106. Repealed. Laws 1982, LB 592, § 2.
- 83-4,107. Repealed. Laws 1982, LB 592, § 2.
- 83-4,108. Repealed. Laws 1982, LB 592, § 2.

### (h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

- 83-4,109. Adult institutions; disciplinary procedures; laws governing.
- 83-4,110. Terms, defined.
- 83-4,111. Rules and regulations; purpose; contents; rights and privileges of inmates.
- 83-4,112. Rules and regulations; filed; distributed; inmates to be informed of rules and policies.
- 83-4,113. Adult disciplinary action; rules posted.
- 83-4,114. Disciplinary restrictions and punishment; degree; solitary confinement; duration; exceptions.
- 83-4,114.01. Chief executive officer; responsibilities; duties; discipline of inmates.
- 83-4,114.02. Inmate; disciplinary measures; confirmation testing.
- 83-4,115. Review of disciplinary action; administrative review boards; membership.
- 83-4,116. Transferred to section 83-4,136.
- 83-4,117. Transferred to section 83-4,137.
- 83-4,118. Transferred to section 83-4,138.
- 83-4,119. Transferred to section 83-4,139.
- 83-4,120. Infraction of rules or policies; report; filed with warden.
- 83-4,121. Disciplinary proceeding; when commenced; exception.
- 83-4,122. Disciplinary procedures; director establish; principles.
- 83-4,123. Access to courts and legal assistance unrestricted.

### (i) CRIMINAL DETENTION MINIMUM STANDARDS

- 83-4,124. Legislative intent; Jail Standards Board; created; administration by Nebraska Commission on Law Enforcement and Criminal Justice; members; qualifications; terms; expenses.
- 83-4,125. Detention facilities, defined.

- Section  
 83-4,126. Jail Standards Board; powers and duties; enumerated.  
 83-4,127. Jail Standards Board; develop and implement standards for criminal detention facilities.  
 83-4,128. Criminal detention facilities; minimum construction standards.  
 83-4,129. Criminal detention facilities; maintenance standards; enumerated.  
 83-4,130. Criminal detention facilities; operation standards; enumerated.  
 83-4,131. Detention facility; inspection; report.  
 83-4,132. Detention facility; inspection; failure to meet minimum standards; corrective action.  
 83-4,133. Detention facility; governing body; failure to take corrective action; petition by Jail Standards Board; hearing; order; appeal; effect on reimbursement.  
 83-4,134. Detention facility; standards applicable; when; violation of standards; effect.

## (j) INMATE GRIEVANCES

- 83-4,135. Inmate; right to file grievance; procedure.  
 83-4,136. Grievance review procedures; records.  
 83-4,137. Grievance review procedures; grievance to go to director, Public Counsel, or other appropriate person.  
 83-4,138. Grievance procedures; inmates to be informed of procedures.  
 83-4,139. Use of grievance procedure unrestricted.

## (k) REGIMENTED INMATE DISCIPLINE UNIT

- 83-4,140. Repealed. Laws 1994, LB 988, § 47.  
 83-4,141. Repealed. Laws 1994, LB 988, § 47.

## (l) INCARCERATION WORK CAMPS

- 83-4,142. Department of Correctional Services; duties; legislative intent.  
 83-4,143. Eligibility for incarceration work camp; court or Board of Parole; considerations; duration.  
 83-4,144. Sentencing court; powers; release on parole.  
 83-4,145. Failure to complete program; effect.  
 83-4,146. Costs.  
 83-4,147. Report; contents.

## (m) SUBSTANCE ABUSE TREATMENT TASK FORCE

- 83-4,148. Repealed. Laws 2004, LB 940, § 4.  
 83-4,149. Repealed. Laws 2004, LB 940, § 4.  
 83-4,150. Repealed. Laws 2004, LB 940, § 4.  
 83-4,151. Repealed. Laws 2004, LB 940, § 4.  
 83-4,152. Repealed. Laws 2004, LB 940, § 4.

## (n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

- 83-4,153. Act, how cited.  
 83-4,154. Terms, defined.  
 83-4,155. Community standard of health care.  
 83-4,156. Medical director; appointment.  
 83-4,157. Medical director; duties.  
 83-4,158. Internal credentialing program.  
 83-4,159. Health care personnel and clinics; requirements.  
 83-4,160. Medical treatment protocols.  
 83-4,161. Communicable diseases; medical treatment protocols.  
 83-4,162. Drugs; medical treatment protocols.  
 83-4,163. Surgical procedures; medical treatment protocols.  
 83-4,164. Peer review and quality assurance program.  
 83-4,165. Medical program; accreditation.

## (a) GENERAL PROVISIONS

**83-401 Repealed. Laws 1963, c. 528, § 12.**

**83-402 Repealed. Laws 1969, c. 817, § 87.**

**83-403 Repealed. Laws 1969, c. 817, § 87.**

**83-404 Repealed. Laws 1969, c. 817, § 87.**

**83-405 Repealed. Laws 1969, c. 817, § 87.**

**83-406 Repealed. Laws 1969, c. 817, § 87.**

**83-407 Repealed. Laws 1969, c. 817, § 87.**

**83-408 Repealed. Laws 1969, c. 817, § 87.**

**83-409 Repealed. Laws 1980, LB 592, § 1.**

**83-410 Repealed. Laws 1969, c. 817, § 87.**

**83-411 Repealed. Laws 1969, c. 817, § 87.**

**83-412 Repealed. Laws 1969, c. 817, § 87.**

**83-413 Repealed. Laws 1969, c. 817, § 87.**

**83-414 Repealed. Laws 1969, c. 817, § 87.**

**83-415 Department of Correctional Services; violence; suppression.**

When any committed offender offers violence to any officer or employee of the Department of Correctional Services or to any other person or committed offender, or attempts to do any injury to the buildings, or to any workshop or to any appurtenances thereof, or disobeys or resists any reasonable command of an officer or employee, such officers and employees shall use all reasonable means to prevent such violence or injury and to enforce the observance of discipline. No officer or employee shall be liable, either civilly or criminally, for any damage to property or injury to any person, including death resulting therefrom, caused by him or his order, while performing any duty under this section, unless such act or order was manifestly beyond the scope of the authority of such officer or employee.

**Source:** Laws 1897, c. 75, § 23, p. 339; R.S.1913, § 7327; C.S.1922, § 6987; C.S.1929, § 83-924; R.S.1943, § 83-415; Laws 1969, c. 817, § 76, p. 3109.

**83-416 Repealed. Laws 1969, c. 817, § 87.**

**83-417 Department of Correctional Services; employees; certain acts prohibited; violation; penalty.**

Any person who purposely or knowingly allows any committed offender to escape or, without the approval of the chief executive officer of the facility, allows any offender to be visited, conversed with, comforted, or relieved or conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony.

**Source:** Laws 1897, c. 75, § 31, p. 340; R.S.1913, § 7335; C.S.1922, § 6995; C.S.1929, § 83-932; R.S.1943, § 83-417; Laws 1969, c. 817, § 77, p. 3110; Laws 1977, LB 39, § 313.

## Cross References

Officer voluntarily permitting prisoner to escape, penalty for, see section 28-912.

Court surmised it doubtful this section was designed to reach transactions between or among inmates, but rather, between civilians and inmates. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

**83-418 Repealed. Laws 1969, c. 817, § 87.****83-419 Repealed. Laws 1969, c. 817, § 87.****83-420 Federal prisoners; expenses.**

The Director of Correctional Services shall receive, safely keep, and subject to the discipline of the Department of Correctional Services, any criminal convicted of any crime against the United States, and sentenced to confinement therein by any court of the United States sitting within this state, until such sentence is executed or until such offender is discharged by due course of law. The United States shall support such offender and pay the expenses of executing his sentence.

**Source:** Laws 1897, c. 75, § 26, p. 339; R.S.1913, § 7330; C.S.1922, § 6990; C.S.1929, § 83-927; R.S.1943, § 83-420; Laws 1969, c. 817, § 78, p. 3110.

**83-421 Repealed. Laws 1969, c. 817, § 87.****83-422 Delivering prisoners to chief executive officer; documents.**

When any convicted prisoner is delivered to the chief executive officer, the officer having the prisoner in charge shall deliver to the chief executive officer a certified copy of the sentence received by the officer from the clerk of the district court and shall take from the chief executive officer a certificate of the delivery of the prisoner. The certified copy of the sentence shall be evidence of the facts contained therein.

**Source:** Laws 1897, c. 75, § 33, p. 341; R.S.1913, § 7338; C.S.1922, § 6998; C.S.1929, § 83-935; R.S.1943, § 83-422; Laws 1993, LB 31, § 34.

When the certified copy of judgment or sentence includes a statement of the nature of the imprisonment imposed and the duration thereof, it fulfills all purposes contemplated by this section. *Dunham v. O'Grady*, 137 Neb. 649, 290 N.W. 723 (1940).

Provisions hereof, relative to delivery of convicts to penitentiary, are equally applicable to state reformatory for men. *Myers v. Fenton*, 121 Neb. 56, 236 N.W. 143 (1931).

**83-423 Costs; transporting prisoners; returning fugitives from justice; counties to pay.**

Each county shall pay the costs of transporting convicted prisoners to any Department of Correctional Services adult facility and the cost of returning fugitives from justice.

**Source:** Laws 1915, c. 138, § 1, p. 304; C.S.1922, § 7000a; C.S.1929, § 83-938; R.S.1943, § 83-423; Laws 1993, LB 31, § 35.

**83-424 Fees and expenses; transporting prisoners; mileage; paid by county where crime was committed; amounts.**

The expenses and fees of sheriffs and other officers incurred in conveying convicted prisoners to any Department of Correctional Services adult facility shall be examined, adjusted, and approved by the county board and paid out of

the treasury of the county in which the crime was committed. The county board shall allow expenses and fees at the following rates: (1) For the sheriff, six dollars per day for time actually necessary in conveying a prisoner to the facility and return; and (2) for each assistant or guard absolutely necessary, six dollars per day. No allowance for assistance shall be made when only one prisoner is conveyed to a facility. The county board shall allow the actual and necessary traveling expenses in going and coming. When the trip is made by automobile, mileage included in such expenses shall be computed at the rate provided in section 33-117 for county sheriffs and deputy county sheriffs for each mile actually and necessarily traveled by the most direct route.

**Source:** Laws 1897, c. 75, § 36, p. 341; R.S.1913, § 7341; Laws 1915, c. 138, § 2, p. 304; C.S.1922, § 7001; C.S.1929, § 83-939; Laws 1933, c. 96, § 21, p. 399; C.S.Supp.,1941, § 83-939; R.S.1943, § 83-424; Laws 1947, c. 123, § 3, p. 361; Laws 1953, c. 348, § 1, p. 1124; Laws 1957, c. 70, § 11, p. 303; Laws 1959, c. 84, § 6, p. 389; Laws 1961, c. 162, § 2, p. 492; Laws 1965, c. 566, § 1, p. 1851; Laws 1969, c. 823, § 1, p. 3130; Laws 1974, LB 625, § 5; Laws 1978, LB 691, § 5; Laws 1980, LB 615, § 5; Laws 1981, LB 204, § 207; Laws 1993, LB 31, § 36.

Sheriff's per diem should be accounted for to county. Drexel v. Douglas County, 62 Neb. 862, 87 N.W. 1053 (1901).

**83-425 Repealed. Laws 1969, c. 817, § 87.**

**83-426 Repealed. Laws 1969, c. 817, § 87.**

**83-427 Adult facility; escapee.**

When any inmate escapes from any Department of Correctional Services adult facility, the chief executive officer of the facility shall use all proper means for the apprehension of the inmate.

**Source:** Laws 1897, c. 75, § 34, p. 341; R.S.1913, § 7339; C.S.1922, § 6999; C.S.1929, § 83-936; R.S.1943, § 83-427; Laws 1993, LB 31, § 37.

**83-428 Repealed. Laws 1993, LB 31, § 83.**

**83-429 Repealed. Laws 1969, c. 817, § 87.**

**83-430 Repealed. Laws 1969, c. 817, § 87.**

**83-431 Repealed. Laws 1969, c. 817, § 87.**

**83-432 Repealed. Laws 1969, c. 817, § 87.**

**83-432.01 Expiration of act.**

**83-432.02 Expiration of act.**

**83-432.03 Expiration of act.**

**83-432.04 Expiration of act.**

**83-432.05 Expiration of act.**

**83-433 Repealed. Laws 1969, c. 817, § 87.**

**83-434 Repealed. Laws 1969, c. 817, § 87.**

**83-435 Repealed. Laws 1969, c. 817, § 87.**

**83-436 Repealed. Laws 1969, c. 817, § 87.**

**83-437 Repealed. Laws 1969, c. 817, § 87.**

**83-438 Repealed. Laws 1969, c. 817, § 87.**

**83-439 Repealed. Laws 1969, c. 817, § 87.**

**83-440 Repealed. Laws 1969, c. 817, § 87.**

**83-440.01 Repealed. Laws 1969, c. 817, § 87.**

**83-440.02 Repealed. Laws 1969, c. 817, § 87.**

**83-440.03 Repealed. Laws 1969, c. 817, § 87.**

**83-440.04 Repealed. Laws 1969, c. 817, § 87.**

**83-440.05 Repealed. Laws 1969, c. 817, § 87.**

**83-441 Repealed. Laws 1969, c. 817, § 87.**

**83-442 Repealed. Laws 1969, c. 817, § 87.**

**83-443 Financial interest in inmate labor prohibited; violation; penalty.**

No officer or employee of the Department of Correctional Services who has charge, control, or direction of any inmates shall be in any manner whatever financially interested in the work or profit of the labor of any inmate, and no such officer or employee shall receive any pay, gift, gratuity, or favor of a valuable character from any person interested either directly or indirectly in such labor. Any person violating this section shall be guilty of a Class IV felony. The offense may be reduced to a misdemeanor upon recommendation of the jury, if the court concurs in the recommendation. In such a case, the defendant shall be summarily discharged by the Director of Correctional Services.

**Source:** Laws 1921, c. 285, § 2, p. 931; C.S.1922, § 6974; C.S.1929, § 83-911; R.S.1943, § 83-443; Laws 1973, LB 563, § 48; Laws 1977, LB 39, § 314; Laws 1993, LB 31, § 38.

**83-444 Department officers and employees; interest in prison work prohibited.**

No officer or employee of the Department of Correctional Services shall employ inmates on work in which he or she or any other officer has a personal interest. No such officer or employee shall be connected with or have any interest in the business or shops belonging to the department.

**Source:** Laws 1897, c. 75, § 18, p. 338; R.S.1913, § 7326; C.S.1922, § 6986; C.S.1929, § 83-923; R.S.1943, § 83-444; Laws 1993, LB 31, § 39.

**83-445 Repealed. Laws 1969, c. 817, § 87.**

**83-446 Repealed. Laws 1963, c. 528, § 12.**

**83-447 Repealed. Laws 1963, c. 528, § 12.**

**83-448 Repealed. Laws 1969, c. 817, § 87.**

**83-449 Repealed. Laws 1969, c. 817, § 87.**

**83-450 Repealed. Laws 1969, c. 817, § 87.**

**83-451 Repealed. Laws 1969, c. 817, § 87.**

**83-452 Repealed. Laws 1969, c. 817, § 87.**

**83-453 Repealed. Laws 1969, c. 817, § 87.**

**83-454 Howard's Day; observance in all state penal and reformatory institutions.**

The second day of September in each year, the birthday of John Howard, the author of prison reform throughout the world, shall be observed as a legal holiday in all the penal and reformatory institutions of this state and shall be known as "Howard's Day".

**Source:** Laws 1911, c. 135, § 1, p. 447; R.S.1913, § 7352; C.S.1922, § 7012; C.S.1929, § 83-950.

(b) STATE REFORMATORY

**83-455 Repealed. Laws 1969, c. 817, § 87.**

**83-456 Repealed. Laws 1963, c. 528, § 12.**

**83-457 Repealed. Laws 1963, c. 528, § 12.**

**83-458 Repealed. Laws 1963, c. 528, § 12.**

**83-459 Repealed. Laws 1963, c. 528, § 12.**

**83-460 Repealed. Laws 1963, c. 528, § 12.**

**83-461 Repealed. Laws 1963, c. 528, § 12.**

**83-462 Repealed. Laws 1963, c. 528, § 12.**

(c) YOUTH REHABILITATION AND TREATMENT CENTERS

**83-463 Repealed. Laws 1969, c. 817, § 87.**

**83-464 Repealed. Laws 1969, c. 817, § 87.**

**83-465 Repealed. Laws 1998, LB 1073, § 179.**

**83-466 Repealed. Laws 1993, LB 31, § 83.**

**83-467 Repealed. Laws 1998, LB 1073, § 179.**

**83-468 Repealed. Laws 1998, LB 1073, § 179.**

**83-469 Repealed. Laws 1998, LB 1073, § 179.**

**83-470 Repealed. Laws 1998, LB 1073, § 179.**

83-471 Repealed. Laws 1998, LB 1073, § 179.

83-472 Transferred to section 43-412.

83-473 Transferred to section 28-912.01.

83-473.01 Repealed. Laws 1998, LB 1073, § 179.

83-474 Repealed. Laws 1969, c. 817, § 87.

83-474.01 Repealed. Laws 1998, LB 1073, § 179.

83-475 Repealed. Laws 1953, c. 351, § 1.

83-476 Repealed. Laws 1953, c. 351, § 1.

83-477 Repealed. Laws 1953, c. 351, § 1.

83-478 Repealed. Laws 1953, c. 351, § 1.

83-479 Repealed. Laws 1953, c. 351, § 1.

83-480 Repealed. Laws 1969, c. 817, § 87.

83-481 Repealed. Laws 1969, c. 817, § 87.

83-482 Repealed. Laws 1983, LB 44, § 1.

83-483 Repealed. Laws 1969, c. 817, § 87.

83-484 Repealed. Laws 1969, c. 817, § 87.

83-485 Repealed. Laws 1969, c. 817, § 87.

83-486 Repealed. Laws 1969, c. 817, § 87.

83-487 Repealed. Laws 1998, LB 1073, § 179.

83-488 Repealed. Laws 1969, c. 817, § 87.

83-489 Repealed. Laws 1951, c. 331, § 1.

83-490 Transferred to section 83-473.01.

(d) GENOA STATE FARM

83-491 Repealed. Laws 1951, c. 332, § 3.

83-492 Repealed. Laws 1949, c. 291, § 5.

83-493 Repealed. Laws 1949, c. 291, § 5.

(e) CENTRAL RECEPTION CENTER

83-494 Repealed. Laws 1969, c. 817, § 87.

83-495 Repealed. Laws 1969, c. 817, § 87.

83-496 Repealed. Laws 1969, c. 817, § 87.

83-497 Repealed. Laws 1969, c. 817, § 87.

**83-498 Repealed. Laws 1969, c. 817, § 87.**

**83-499 Repealed. Laws 1969, c. 817, § 87.**

(f) YOUTH DIAGNOSTIC AND REHABILITATION CENTER

**83-4,100 Repealed. Laws 1997, LB 307, § 236.**

**83-4,101 Transferred to section 43-413.**

**83-4,102 Transferred to section 43-414.**

**83-4,103 Repealed. Laws 1998, LB 1073, § 179.**

**83-4,104 Transferred to section 43-415.**

**83-4,104.01 Repealed. Laws 1996, LB 1141, § 3.**

(g) COMPREHENSIVE PENAL REFORM PLAN

**83-4,105 Repealed. Laws 1981, LB 545, § 52.**

**83-4,106 Repealed. Laws 1982, LB 592, § 2.**

**83-4,107 Repealed. Laws 1982, LB 592, § 2.**

**83-4,108 Repealed. Laws 1982, LB 592, § 2.**

(h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

**83-4,109 Adult institutions; disciplinary procedures; laws governing.**

Disciplinary procedures in adult institutions administered by the Department of Correctional Services shall be governed by the provisions of sections 83-4,109 to 83-4,123.

**Source:** Laws 1976, LB 275, § 1; Laws 1993, LB 31, § 51.

Sections 83-4,109 to 83-4,123 constitute a special act relating to disciplinary procedures in adult correctional institutions and control over the more general provisions which are found in the Administrative Procedure Act. *Reed v. Parratt*, 207 Neb. 796, 301 N.W.2d 343 (1981).

**83-4,110 Terms, defined.**

For purposes of sections 83-4,109 to 83-4,123, unless the context otherwise requires:

- (1) Director shall mean the Director of Correctional Services; and
- (2) Department shall mean the Department of Correctional Services.

**Source:** Laws 1976, LB 275, § 2; Laws 1993, LB 31, § 52.

**83-4,111 Rules and regulations; purpose; contents; rights and privileges of inmates.**

(1) The department shall adopt and promulgate rules and regulations to establish criteria for justifiably and reasonably determining which rights and privileges an inmate forfeits upon commitment and which rights and privileges an inmate retains.

(2) Such rules and regulations shall include, but not be limited to, criteria concerning (a) disciplinary procedures and a code of offenses for which discipline may be imposed, (b) disciplinary segregation, (c) grievance procedures, (d) good-time credit, (e) mail and visiting privileges, and (f) rehabilitation opportunities.

(3) The rules and regulations adopted pursuant to sections 83-4,109 to 83-4,123 shall in no manner deprive an inmate of any rights and privileges to which he or she is entitled under other provisions of law or under policies adopted in a correctional facility.

**Source:** Laws 1976, LB 275, § 3; Laws 1993, LB 31, § 53.

**83-4,112 Rules and regulations; filed; distributed; inmates to be informed of rules and policies.**

(1) Copies of all rules and regulations shall be filed pursuant to the Administrative Procedure Act and shall be distributed to all adult correctional facilities in this state.

(2) Inmates shall be informed of rules and policies concerning behavior and discipline, inmate rights and developmental opportunities, work or education programs, and complaint procedures at the facility. Such rules and policies, or significant portions thereof, shall be posted at conspicuous places throughout the facility.

**Source:** Laws 1976, LB 275, § 4; Laws 1993, LB 31, § 54.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**83-4,113 Adult disciplinary action; rules posted.**

All adult disciplinary action within the system of the department shall be pursuant to sections 83-4,109 to 83-4,123. Inmates shall be informed of rules of behavior and discipline. Such rules shall be posted or otherwise made available to the inmates.

**Source:** Laws 1976, LB 275, § 5; Laws 1993, LB 31, § 55.

**83-4,114 Disciplinary restrictions and punishment; degree; solitary confinement; duration; exceptions.**

There shall be no corporal punishment or disciplinary restrictions on diet. Disciplinary restrictions on clothing, bedding, mail, visitations, use of toilets, washbowls, or scheduled showers shall be imposed only for abuse of such privilege or facility. No person in the adult division shall be placed in solitary confinement for disciplinary reasons for more than fifteen consecutive days, or more than thirty days out of any forty-five-day period, except in cases of violence or attempted violence committed against another person or property when an additional period of isolation for disciplinary reasons is approved by the warden. This provision shall not apply to segregation or isolation of persons for purposes of institutional control.

**Source:** Laws 1976, LB 275, § 6.

This statute, which provides certain limitations on the use of solitary confinement, is inapplicable to inmates under the sentence of death who are kept in administrative segregation.

Anderson and Hochstein v. Gunter, 226 Neb. 724, 414 N.W.2d 281 (1987).

**83-4,114.01 Chief executive officer; responsibilities; duties; discipline of inmates.**

(1) The chief executive officer of each facility of the department shall be responsible for the discipline of inmates who reside in such facility. No inmate shall be punished except upon the order of the chief executive officer of the facility, and no punishment shall be imposed otherwise than in accordance with this section.

(2) Except in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges. In cases of flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in section 83-1,107 be forfeited or withheld and also that the inmate be confined in disciplinary segregation. During the period of disciplinary segregation, such inmate shall be put on an adequate and healthful diet. An inmate in disciplinary segregation shall be visited at least once every eight hours. No cruel, inhuman, or corporal punishment shall be used on any inmate.

(3) The chief executive officer shall maintain a record of breaches of discipline, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of discipline shall be entered in the inmate's file, together with the disposition or punishment for the breach.

(4) The chief executive officer may recommend to the director that an inmate who is considered to be incorrigible by reason of frequent intentional breaches of discipline or who is detrimental to the discipline or the morale of the facility be transferred to another facility for stricter safekeeping and closer confinement, subject to the provisions of section 83-176.

**Source:** Laws 1969, c. 817, § 16, p. 3082; Laws 1972, LB 1499, § 1; R.S.1943, (1987), § 83-185; Laws 1993, LB 31, § 56; Laws 1995, LB 371, § 26; Laws 1997, LB 364, § 22.

An administrative disciplinary proceeding in which a prisoner loses good time for escape does not place him in jeopardy so a subsequent conviction for escape does not constitute double jeopardy. *State v. Maddox*, 190 Neb. 361, 208 N.W.2d 274 (1973).

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Prison authorities had no right, absent statutory authority, to prescribe and enforce regulations authorizing forfeiture of money discovered in the possession of inmates as a punitive measure and their actions in so doing violated due process. *Sell v. Parratt*, 548 F.2d 753 (8th Cir. 1977).

Prison authorities violated rights of inmates by subjecting them to substantial penalties for relatively minor offenses; not

only was revocation of certain privileges contrary to statute, but also it was arbitrary and capricious. *McDonnell v. Wolff*, 483 F.2d 1059 (8th Cir. 1973).

Fighting and threatening an officer's life would amount to flagrant or serious misconduct for which statutory good time may be withheld. Certain activities which would not, or which are best left to judgment of adjustment committee, are outlined. *McDonnell v. Wolff*, 342 F.Supp. 616 (D. Neb. 1972).

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690 (D. Neb. 1970).

**83-4,114.02 Inmate; disciplinary measures; confirmation testing.**

Before disciplinary measures are taken against an inmate for drug or alcohol violations, an inmate may request and the department shall provide independent confirmation testing of positive results of urinalysis testing. If the confirmation test remains positive, the inmate may be required to pay the cost of the confirmation test.

**Source:** Laws 1999, LB 865, § 6.

**83-4,115 Review of disciplinary action; administrative review boards; membership.**

Any review of disciplinary action imposed upon any person shall be pursuant to sections 83-4,109 to 83-4,123. The director shall establish procedures to review the disciplinary actions of inmates. The director may establish one or more administrative review boards within the department to review disciplinary actions. No member of any review board shall also be a member of a disciplinary hearing board, but the same considerations for appointing members to the disciplinary hearing board may apply to appointing members to a review board.

**Source:** Laws 1976, LB 275, § 7; Laws 1993, LB 31, § 57.

**83-4,116 Transferred to section 83-4,136.**

**83-4,117 Transferred to section 83-4,137.**

**83-4,118 Transferred to section 83-4,138.**

**83-4,119 Transferred to section 83-4,139.**

**83-4,120 Infraction of rules or policies; report; filed with warden.**

A written report of any infraction shall be filed with the warden within seventy-two hours of the occurrence of such infraction or the discovery of it. Such report shall be placed in the files of the institution or facility.

**Source:** Laws 1976, LB 275, § 12.

Where a disciplinary misconduct report was not prepared and submitted within 72 hours of the discovery of a penal inmate's infraction and the inmate was not prejudiced by the delay, there

is no violation of due process. *Billups v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 238 Neb. 39, 469 N.W.2d 120 (1991).

**83-4,121 Disciplinary proceeding; when commenced; exception.**

No disciplinary proceeding shall be commenced more than eight calendar days after the infraction or the discovery of such infraction unless the committed person is unable or unavailable for any reason to participate in a disciplinary proceeding.

**Source:** Laws 1976, LB 275, § 13.

An inmate not prejudiced by a violation of this section's 8-day requirement has not suffered a violation of his or her due process rights. *Billups v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 238 Neb. 39, 469 N.W.2d 120 (1991).

within that period. A disciplinary proceeding, under this section, commences when written notice of the alleged infraction is served upon the inmate. *Johnson v. Vitek*, 205 Neb. 745, 290 N.W.2d 190 (1980).

This section requires only that disciplinary action be commenced within eight days, not that the hearing be completed

**83-4,122 Disciplinary procedures; director establish; principles.**

In disciplinary cases which may involve the imposition of disciplinary isolation or the loss of good-time credit, the director shall establish disciplinary procedures consistent with the following principles:

(1) Any person or persons who initiate a disciplinary charge against an inmate shall not determine the disposition of the charge. The director may establish one or more disciplinary boards to hear and determine charges. To the extent possible, a person representing the treatment or counseling staff of the institution or facility shall participate in determining the disposition of the disciplinary case;

(2) An inmate charged with a violation of department rules of behavior shall be given notice of the charge including a statement of the misconduct alleged

and of the rules such conduct is alleged to violate. Such notice shall be given at least twenty-four hours before a hearing on the matter is held;

(3) An inmate charged with a violation of rules shall be entitled to a hearing on that charge at which time he or she shall have an opportunity to appear before and address the person or persons deciding the charge. The individual bringing the charge shall also appear at such hearing;

(4) The person or persons determining the disposition of the charge may also summon to testify any witnesses or other persons with relevant knowledge of the incident. The inmate charged shall be permitted to question any person so summoned and shall be allowed to call witnesses and present documentary evidence in his or her defense when permitting him or her to do so will not be unduly hazardous to institutional safety or correctional goals. The person or persons determining the disposition of charges shall state his, her, or their reasons in writing for refusing to call a witness;

(5) If the charge is sustained, the inmate charged shall be entitled to a written statement of the decision by the persons determining the disposition of the charge, which statement shall include the basis for the decision and the disciplinary action, if any, to be imposed;

(6) A change in work, education, or other program assignment shall not be used for disciplinary purposes;

(7) The inmate charged shall be entitled to an adequate opportunity to prepare a defense. Such opportunity shall include the right to assistance and advice in preparing and presenting a defense from any inmate in general population or staff member at the institution where the hearing is held. Such inmate or staff member may serve in such an advisory capacity for the inmate so charged;

(8) Any hearing conducted pursuant to this section shall be tape recorded, and such recording shall be preserved for a period of six months; and

(9) The standard of proof to sustain the charge shall be substantial evidence.

**Source:** Laws 1976, LB 275, § 14; Laws 1988, LB 673, § 1; Laws 1993, LB 31, § 58; Laws 1993, LB 455, § 1.

Pursuant to subsection (4) of this section, a charged inmate's request to produce relevant documentary evidence should generally be permitted unless allowing the inmate to do so will be unduly hazardous to institutional safety or correctional goals. *Barnes v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 453, 676 N.W.2d 385 (2004).

Pursuant to subsection (4) of this section, when the disciplinary committee declines a charged inmate's request to produce relevant documentary evidence in the inmate's defense, the committee should make a finding regarding the reasons for denial of the request. *Barnes v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 453, 676 N.W.2d 385 (2004).

There is no due process violation when there is a "legitimate penological concern" to deny the defendant's request for a witness to be present at an institutional disciplinary committee hearing for the defendant's use of drugs. *Claypool v. Nebraska Dept. of Corr. Servs.*, 12 Neb. App. 87, 667 N.W.2d 267 (2003).

The specific statutes found in Chapter 83 governing prison disciplinary hearings control the factfinding procedures used in such hearings, and they do not require the use of the Nebraska rules of evidence for hearings conducted in accordance with this section. *Dailey v. Nebraska Dept. of Corr. Servs.*, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

### **83-4,123 Access to courts and legal assistance unrestricted.**

Nothing in sections 83-4,109 to 83-4,123 shall be construed as to restrict or impair an inmate's free access to the courts and necessary legal assistance in any cause of action arising under such sections or to judicial review for disciplinary cases which involve the imposition of disciplinary isolation or the loss of good-time credit in accordance with the Administrative Procedure Act. Such judicial review may only be invoked after completion of any review of the hearing prescribed by section 83-4,122 by the department.

**Source:** Laws 1976, LB 275, § 15; Laws 1988, LB 673, § 2; Laws 1993, LB 31, § 59.

## Cross References

**Administrative Procedure Act**, see section 84-920.

Judicial review of a disciplinary case in an adult institution is permitted only when the disciplinary action imposed on the inmate involves the imposition of disciplinary isolation or the loss of good-time credit. *Dittrich v. Nebraska Dept. of Corr. Servs.*, 248 Neb. 818, 539 N.W.2d 432 (1995).

Judicial review of disciplinary cases is limited to those cases which involve the imposition of the penalties enumerated in this section. *Abdullah v. Nebraska Dept. of Corr. Servs.*, 245 Neb. 545, 513 N.W.2d 877 (1994).

## (i) CRIMINAL DETENTION MINIMUM STANDARDS

**83-4,124 Legislative intent; Jail Standards Board; created; administration by Nebraska Commission on Law Enforcement and Criminal Justice; members; qualifications; terms; expenses.**

It is hereby declared to be the policy of the State of Nebraska that all criminal detention facilities and juvenile detention facilities in the state shall conform to certain minimum standards of construction, maintenance, and operation. To further such policy, the Jail Standards Board is hereby created. For administrative and budgetary purposes such board shall be within the Nebraska Commission on Law Enforcement and Criminal Justice. The board shall consist of the Director of Correctional Services or, if the Director of Correctional Services chooses not to serve on the board, a person appointed by the director to serve in lieu of the director, the State Fire Marshal or his or her designee, and nine appointive members, three of whom shall be from each of the three congressional districts, to be appointed by the Governor. The appointive members of the board shall be appointed from recommendation lists containing at least three names submitted by the Nebraska Association of County Officials, the Nebraska County Sheriffs Association, the Nebraska State Bar Association, and the Police Officers Association of Nebraska. The appointive members of the board shall consist of: (1) Two county commissioners or supervisors; (2) one county sheriff; (3) one municipal police chief; (4) one member of the Nebraska State Bar Association; (5) two lay people; (6) one person who at the time of his or her appointment is serving as an administrator responsible for the operation and maintenance of a juvenile detention facility; and (7) one person who at the time of his or her appointment is serving as an administrator or jailer responsible for the operation and maintenance of a criminal detention facility having an average daily population of greater than fifty persons. The term of the district judge serving on July 20, 2002, terminates on such date.

The terms of office for all members initially appointed shall be three years. Upon completion of the initial term of the board, the Governor shall appoint one member from each congressional district for a term of one year, one member from each congressional district for a term of two years, and one member from each congressional district for a term of three years. Succeeding appointees shall be representative of the same congressional district and shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed.

The members of the board shall serve without compensation, but they shall be reimbursed for their actual expenses while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1975, LB 417, § 25; Laws 1978, LB 212, § 1; Laws 1980, LB 700, § 1; R.S.Supp.,1980, § 83-945; Laws 1981, LB 204,

§ 208; Laws 1981, LB 328, § 9; Laws 1992, LB 1184, § 17; Laws 1994, LB 461, § 1; Laws 1994, LB 925, § 1; Laws 2002, LB 93, § 25.

**83-4,125 Detention facilities, defined.**

For purposes of sections 83-4,124 to 83-4,134:

(1) Criminal detention facility shall mean any institution operated by a political subdivision or a combination of political subdivisions for the careful keeping or rehabilitative needs of adult or juvenile criminal offenders or those persons being detained while awaiting disposition of charges against them. Criminal detention facility shall not include any institution operated by the Department of Correctional Services. Criminal detention facilities shall be classified as follows:

(a) Type I Facilities shall mean criminal detention facilities used for the detention of persons for not more than twenty-four hours, excluding nonjudicial days;

(b) Type II Facilities shall mean criminal detention facilities used for the detention of persons for not more than ninety-six hours, excluding nonjudicial days; and

(c) Type III Facilities shall mean criminal detention facilities used for the detention of persons beyond ninety-six hours; and

(2) Juvenile detention facility shall mean an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility shall not include any institution operated by the department.

**Source:** Laws 1975, LB 417, § 26; Laws 1978, LB 212, § 2; R.S.Supp.,1980, § 83-946; Laws 1992, LB 1184, § 18; Laws 1994, LB 461, § 2; Laws 2000, LB 1167, § 51; Laws 2003, LB 760, § 19.

**83-4,126 Jail Standards Board; powers and duties; enumerated.**

The Jail Standards Board shall have the authority and responsibility:

(1) To develop minimum standards for the construction, maintenance, and operation of criminal detention facilities;

(2) To perform such other duties as may be necessary to carry out the policy of the state regarding such criminal detention facilities and juvenile detention facilities as stated in sections 83-4,124 to 83-4,134; and

(3) Consistent with the purposes and objectives of the Juvenile Services Act, to develop standards for juvenile detention facilities, including, but not limited to, standards for physical facilities, care, programs, and disciplinary procedures, and to develop guidelines pertaining to the operation of such facilities.

**Source:** Laws 1975, LB 417, § 28; Laws 1978, LB 212, § 3; R.S.Supp.,1980, § 83-948; Laws 1990, LB 663, § 17; Laws 1992, LB 1184, § 19.

## Cross References

Juvenile Services Act, see section 43-2401.

**83-4,127 Jail Standards Board; develop and implement standards for criminal detention facilities.**

On or before July 1, 1979, the Jail Standards Board shall study, develop, and implement minimum standards for the construction, maintenance, and operation of criminal detention facilities pursuant to sections 83-4,128 to 83-4,130.

**Source:** Laws 1978, LB 212, § 4; R.S.Supp.,1980, § 83-948.01.

**83-4,128 Criminal detention facilities; minimum construction standards.**

The minimum standards for the construction of criminal detention facilities shall include but not be limited to standards for the planning, design, or actual construction of new, modified, or renovated facilities, in excess of five thousand dollars.

**Source:** Laws 1978, LB 212, § 5; R.S.Supp.,1980, § 83-948.02.

**83-4,129 Criminal detention facilities; maintenance standards; enumerated.**

The standards for the maintenance of criminal detention facilities shall include but not be limited to standards for:

- (1) The staffing, training, and demeanor of personnel;
- (2) The procedures for the admission and release of prisoners;
- (3) The assignment procedures for assigning prisoners to housing, programs, and related activities;
- (4) The establishment of a standardized records and statistical system for criminal detention facilities;
- (5) The establishment of systems and procedures for the handling of prisoner mail, visits, and telephone services;
- (6) The procedures for prisoner access to the media, general library, exercise, and recreation;
- (7) The procedures for prisoner access to legal material, legal counsel, and religion;
- (8) The supervision and uses of the facility arsenal, firearms, and key room;
- (9) Food services;
- (10) Health services; and
- (11) Prisoner conduct.

**Source:** Laws 1978, LB 212, § 6; R.S.Supp.,1980, § 83-948.03.

**83-4,130 Criminal detention facilities; operation standards; enumerated.**

The standards for the operation of criminal detention facilities shall include but not be limited to standards for:

- (1) The classification and reclassification of prisoners;
- (2) The rehabilitative services required for prisoners;
- (3) The disciplinary procedures for prisoners;
- (4) The grievance procedure for prisoners; and

(5) The search and admission of visitors.

**Source:** Laws 1978, LB 212, § 7; R.S.Supp.,1980, § 83-948.04.

**83-4,131 Detention facility; inspection; report.**

Personnel of the Nebraska Commission on Law Enforcement and Criminal Justice shall visit and inspect each criminal detention facility and juvenile detention facility in the state for the purpose of determining the conditions of confinement, the treatment of persons confined in the facilities, and whether such facilities comply with the minimum standards established by the Jail Standards Board. A written report of each inspection shall be made within thirty days following such inspection to the appropriate governing body responsible for the criminal detention facility or juvenile detention facility involved. The report shall specify those areas in which the facility does not comply with the required minimum standards.

**Source:** Laws 1975, LB 417, § 30; Laws 1978, LB 212, § 8; R.S.Supp.,1980, § 83-950; Laws 1981, LB 328, § 10; Laws 1992, LB 1184, § 20; Laws 1996, LB 233, § 18.

**83-4,132 Detention facility; inspection; failure to meet minimum standards; corrective action.**

If an inspection under sections 83-4,124 to 83-4,134 discloses that the criminal detention facility or juvenile detention facility does not meet the minimum standards established by the Jail Standards Board, the board shall send notice, together with the inspection report, to the governing body responsible for the facility. The appropriate governing body shall promptly meet to consider the inspection report, and the inspection personnel shall appear to advise and consult concerning appropriate corrective action. The governing body shall then initiate appropriate corrective action within six months of the receipt of such inspection report or may voluntarily close the facility or the objectionable portion thereof.

**Source:** Laws 1975, LB 417, § 31; Laws 1978, LB 212, § 9; R.S.Supp.,1980, § 83-951; Laws 1992, LB 1184, § 21; Laws 1996, LB 233, § 19.

**83-4,133 Detention facility; governing body; failure to take corrective action; petition by Jail Standards Board; hearing; order; appeal; effect on reimbursement.**

If the governing body of the juvenile detention facility or criminal detention facility fails to initiate corrective action within six months after the receipt of such inspection report, fails to correct the disclosed conditions, or fails to close the criminal detention facility or juvenile detention facility or the objectionable portion thereof, the Jail Standards Board shall advise the Department of Correctional Services that the criminal detention facility does not qualify for reimbursement for state prisoners under section 47-119.01 and at the same time or at a later date may petition the district court within the judicial district in which such facility is located to close the facility. Such petition shall include the inspection report regarding such facility. The local governing body shall then have thirty days to respond to such petition and shall serve a copy of the response on the Jail Standards Board by certified mail, return receipt request-

ed. Thereafter, a hearing shall be held on the petition before the district court, and an order shall be rendered by such court which either:

- (1) Dismisses the petition of the Jail Standards Board;
- (2) Directs that corrective action be initiated in some form by the local governing body of the facility in question; or
- (3) Directs that the facility be closed. An appeal from the decision of the district court may be taken to the Court of Appeals.

If the Jail Standards Board petitions to have the facility closed, the local governing body may challenge the no reimbursement for state prisoners determination in that action, and if there is no petition to close the facility, the local governing body may challenge the no reimbursement for state prisoners determination by filing an action in district court.

**Source:** Laws 1975, LB 417, § 32; Laws 1978, LB 212, § 10; R.S.Supp.,1980, § 83-952; Laws 1991, LB 732, § 154; Laws 1992, LB 1184, § 22; Laws 1998, LB 695, § 6.

**83-4,134 Detention facility; standards applicable; when; violation of standards; effect.**

Sections 83-4,124 to 83-4,134 shall be implemented upon completion of the development of minimum standards by the Jail Standards Board. Thereafter, inspections shall begin, but no criminal detention facility or juvenile detention facility shall be closed within one year of the date of first filing of the minimum standards in the office of the Secretary of State. After one year from the date of first filing of the minimum standards, a facility may be closed for any violation of the minimum standards. Those standards relating to the construction of the facility itself and its plumbing, heating, and wiring systems shall not be enforced so as to require the closing of any facility for a period of two years from the date of the first filing of the minimum standards unless such violations are of immediate danger to the safety of the persons confined in the facility or facility personnel, in which case such period shall be one year.

**Source:** Laws 1975, LB 417, § 33; Laws 1978, LB 212, § 11; R.S.Supp.,1980, § 83-953; Laws 1992, LB 1184, § 23.

(j) INMATE GRIEVANCES

**83-4,135 Inmate; right to file grievance; procedure.**

An inmate shall have the right to file a grievance on any subject except disciplinary actions and matters over which the Department of Correctional Services has no control. Grievance procedures shall provide for the review of grievances by a person or persons other than the person or persons directly responsible for the conditions or actions against which the grievance is filed.

**Source:** Laws 1993, LB 31, § 60.

**83-4,136 Grievance review procedures; records.**

Grievance review procedures shall provide that a record of grievances and any decision made with respect to such grievances shall be preserved for a period of one year.

**Source:** Laws 1976, LB 275, § 8; R.S.1943, (1987), § 83-4,116; Laws 1993, LB 31, § 61.

**83-4,137 Grievance review procedures; grievance to go to director, Public Counsel, or other appropriate person.**

Grievance review procedures shall allow inmates to communicate grievances directly to the Director of Correctional Services, the office of the Public Counsel, or any other appropriate person outside the Department of Correctional Services.

**Source:** Laws 1976, LB 275, § 9; R.S.1943, (1987), § 83-4,117; Laws 1993, LB 31, § 62.

**83-4,138 Grievance procedures; inmates to be informed of procedures.**

All inmates shall be informed of the grievance procedures established by the department and copies of such procedures shall be available to all inmates.

**Source:** Laws 1976, LB 275, § 10; R.S.1943, (1987), § 83-4,118; Laws 1993, LB 31, § 63.

**83-4,139 Use of grievance procedure unrestricted.**

Discipline shall not be imposed because of use of the grievance procedure.

**Source:** Laws 1976, LB 275, § 11; R.S.1943, (1987), § 83-4,119; Laws 1993, LB 31, § 64.

## (k) REGIMENTED INMATE DISCIPLINE UNIT

**83-4,140 Repealed. Laws 1994, LB 988, § 47.****83-4,141 Repealed. Laws 1994, LB 988, § 47.**

## (l) INCARCERATION WORK CAMPS

**83-4,142 Department of Correctional Services; duties; legislative intent.**

The Department of Correctional Services shall develop and implement an incarceration work camp, to be completed no later than January 1, 2005, for placement of felony offenders as a condition of a sentence of intensive supervision probation or as a transitional phase prior to release on parole. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by addressing the criminogenic needs of certain designated offenders and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

**Source:** Laws 1997, LB 882, § 2; Laws 2005, LB 538, § 27; Laws 2007, LB83, § 1.

**83-4,143 Eligibility for incarceration work camp; court or Board of Parole; considerations; duration.**

(1) It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

(3) It is also the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.

(4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

**Source:** Laws 1997, LB 882, § 3; Laws 2000, LB 288, § 1; Laws 2005, LB 538, § 28; Laws 2006, LB 1199, § 104; Laws 2007, LB83, § 2.

**83-4,144 Sentencing court; powers; release on parole.**

Upon successful completion of the incarceration work camp program, as determined by the Department of Correctional Services, the sentencing court may modify the offender's conditions of his or her sentence of probation, place the offender in an aftercare program, or discharge the offender. An offender placed in an incarceration work camp pursuant to a recommendation of the

Board of Parole shall be released on parole upon successful completion, as determined by the board, of the incarceration work camp program.

**Source:** Laws 1997, LB 882, § 4; Laws 2007, LB83, § 3.

**83-4,145 Failure to complete program; effect.**

If the offender for any reason fails to successfully complete the incarceration work camp program, the sentencing court may impose any other sentence that the court may have originally imposed. An offender placed at the incarceration work camp pursuant to a recommendation of the Board of Parole who fails to successfully complete the incarceration work camp program shall be returned to the board for a rescission hearing. Credit shall be given for time actually served in the incarceration work camp program.

**Source:** Laws 1997, LB 882, § 5; Laws 2007, LB83, § 4.

**83-4,146 Costs.**

All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state. Counties shall be liable for the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate only if the offender is discharged for unsatisfactory performance from the incarceration work camp, except that the state shall be liable for the cost of transporting the offender to the incarceration work camp when such placement was made pursuant to a recommendation by the Board of Parole and for returning the offender to the appropriate Department of Correctional Services adult correctional facility if the offender is discharged for unsatisfactory performance from the incarceration work camp.

**Source:** Laws 1997, LB 882, § 6; Laws 2003, LB 46, § 29; Laws 2007, LB83, § 5.

**83-4,147 Report; contents.**

An annual progress report shall be provided to the Legislature ensuring that all programmatic objectives are being met. The report shall include an evaluation of the impact of the multi-treatment programs, including program costs, educational achievement, inmate disciplinary activity, probation release decisionmaking, and community reintegration on November 1 of the year following implementation.

**Source:** Laws 1997, LB 882, § 7.

(m) SUBSTANCE ABUSE TREATMENT TASK FORCE

**83-4,148 Repealed. Laws 2004, LB 940, § 4.**

**83-4,149 Repealed. Laws 2004, LB 940, § 4.**

**83-4,150 Repealed. Laws 2004, LB 940, § 4.**

**83-4,151 Repealed. Laws 2004, LB 940, § 4.**

**83-4,152 Repealed. Laws 2004, LB 940, § 4.**

## (n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

**83-4,153 Act, how cited.**

Sections 83-4,153 to 83-4,165 shall be known and may be cited as the Nebraska Correctional Health Care Services Act.

**Source:** Laws 2001, LB 154, § 1.

**83-4,154 Terms, defined.**

For purposes of the Nebraska Correctional Health Care Services Act:

(1) Community standard of health care means medical care of the type, quality, and amount that any individual residing within the community in question could expect to receive in that community;

(2) Department means the Department of Correctional Services;

(3) Health care services means all medical care provided by or on behalf of the department to inmates and includes the practice of medicine and surgery, the practice of pharmacy, nursing care, dental care, optometric care, audiological care, physical therapy, mental health care, and substance abuse counseling and treatment;

(4) Inmate means an individual in the custody of the department; and

(5) Medical doctor means a person licensed to practice medicine and surgery in this state.

**Source:** Laws 2001, LB 154, § 2.

**83-4,155 Community standard of health care.**

In administering health care services, the department shall provide a community standard of health care to all inmates.

**Source:** Laws 2001, LB 154, § 3.

**83-4,156 Medical director; appointment.**

The Director of Correctional Services shall appoint a medical director for the department who shall be a medical doctor. The medical director shall be a person familiar with principles of quality assurance and internal credentialing procedures and shall be under the sole immediate supervision of the Director of Correctional Services.

**Source:** Laws 2001, LB 154, § 4.

**83-4,157 Medical director; duties.**

The medical director shall:

(1) Coordinate all clinical services;

(2) Participate in the selection and supervision of all clinical staff employed by or under contract with the department, including medical doctors, physician assistants, pharmacists, pharmacy technicians, registered nurses, licensed practical nurses, advanced practice registered nurses practicing under and in accordance with their respective certification acts, mental health practitioners, alcohol and drug counselors, laboratory technicians, physical therapists, optometrists, audiologists, dentists, dental assistants, and dental hygienists;

(3) Maintain and preserve the medical records of health care services;

(4) Approve the purchasing of all necessary medical supplies and medical equipment for the department;

(5) Recommend all necessary programs for the preservice, inservice, and continuing medical training and education of the health care staff and other relevant staff of the department, including training specifically designed to promote prompt and effective responses by all staff of the department to medical emergencies;

(6) Develop and implement condition-specific medical treatment protocols that ensure compatibility with a community standard of health care, including protocols addressing the: (a) Treatment of gastrointestinal bleeds; (b) detection and treatment of all communicable diseases; (c) treatment of gender-specific problems; (d) treatment of diabetes; (e) treatment of hypertension; (f) treatment of headaches; (g) utilization of surgical procedures; (h) control of infection; (i) provision of dental care; (j) provision of age-specific and gender-specific routine health maintenance; (k) means by which inmates obtain access to health care services; (l) use of prescribed drugs, devices, or biologicals for the purpose of pain management; (m) referral of patients to medical specialists not in the employ of the department; and (n) initiation, observance, and termination of do not resuscitate orders initiated pursuant to the Rights of the Terminally Ill Act;

(7) Develop and implement a system of general discharge planning for the health care services to be received by inmates who are soon to be released from the custody of the department and who have chronic health care problems;

(8) Develop and implement a comprehensive health care services plan;

(9) Develop and implement an internal credentialing program for the employment and retention of the health care staff of the department based on a community standard of health care; and

(10) Develop and implement an internal peer review and quality assurance program based upon a community standard of health care.

**Source:** Laws 2001, LB 154, § 5; Laws 2004, LB 1083, § 142; Laws 2005, LB 256, § 98.

**Cross References**

**Rights of the Terminally Ill Act**, see section 20-401.

**83-4,158 Internal credentialing program.**

The internal credentialing program shall include for each health care staff member being considered for employment or retention (1) an investigation of the history of the health care staff member using (a) when possible, the national practitioner data bank under the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq., as such act existed on September 1, 2001, and (b) contacts with prior employers of the health care staff member and (2) confirmation of all professional permits, licenses, or other authorizations to practice of the health care staff member. The medical director shall maintain a credentialing file for all health care staff members employed by the department. The medical director shall ensure the recredentialing of each health care staff member employed by the department every two years.

**Source:** Laws 2001, LB 154, § 6.

**83-4,159 Health care personnel and clinics; requirements.**

(1) In assigning health care staff to the correctional facilities under the control of the department, the medical director shall ensure that each facility has at least one designated medical doctor on call at all times and that each facility housing more than five hundred inmates has at least one full-time medical doctor assigned to that facility as his or her primary employment location.

(2) The medical director shall establish an acute care clinic in each of the correctional facilities and ensure that each clinic is staffed by at least one medical doctor, physician assistant, or advanced practice registered nurse practicing under and in accordance with his or her respective certification act.

(3) The medical director shall establish chronic care clinics to provide health care services to inmates with chronic disease conditions, including diabetes and hypertension.

(4) The medical director shall establish a human immunodeficiency virus infection and acquired immunodeficiency syndrome chronic care clinic which shall provide for the relevant treatment, counseling, and education of inmates who are known to be infected with the human immunodeficiency virus.

**Source:** Laws 2001, LB 154, § 7; Laws 2005, LB 256, § 99.

#### **83-4,160 Medical treatment protocols.**

All medical treatment protocols developed, approved, and implemented by the department shall be based upon a community standard of health care. When applicable, these medical treatment protocols shall emphasize the need to maintain the continuity of any previously prescribed drugs, devices, or biologicals and treatment regimens that inmates are subject to when they enter the custody of the department. The medical director shall establish a mechanism for the periodic systematic review of all existing medical treatment protocols. All deviations from the approved medical treatment protocols shall be thoroughly documented by the department's health care staff and shall be systematically reviewed by the department's peer review and quality assurance panel.

**Source:** Laws 2001, LB 154, § 8.

#### **83-4,161 Communicable diseases; medical treatment protocols.**

In developing medical treatment protocols for the clinics, the medical director shall define the circumstances under which chronically ill inmates should return to the chronic care clinics for check-ups and when appointments should be made for chronically ill inmates to next be examined by health care staff. In developing and implementing medical treatment protocols for clinics for the detection and treatment of communicable diseases, the medical director shall ensure that the medical treatment protocols include:

(1) Provisions allowing for the routine immunization against communicable diseases of all inmates upon entering the custody of the department;

(2) Provisions requiring each inmate to be screened for communicable diseases, including (a) human immunodeficiency virus, (b) hepatitis A virus, (c) hepatitis B virus, (d) hepatitis C virus, (e) tuberculosis, and (f) sexually transmitted diseases, when the inmate enters into the custody of the department;

(3) Provisions requiring each inmate to be screened for (a) human immunodeficiency virus, unless previously tested positive, (b) hepatitis B virus, unless

previously tested positive, (c) hepatitis C virus, unless previously tested positive, (d) tuberculosis, unless tested within the immediately preceding year or previously tested positive, and (e) sexually transmitted diseases, when the inmate leaves the custody of the department. No such screening shall be conducted without inmate consent;

(4) Provisions requiring any inmate in the custody of the department found to be infected with any of the diseases referenced in subdivision (2) of this section, when medically indicated, to be immediately referred to an infectious disease specialist for appropriate treatment;

(5) Provisions describing in detail those circumstances when it is medically desirable, because of risk to other noninfected inmates, to segregate, on an individual basis, any inmate found to be infected with the human immunodeficiency virus and also describing those circumstances when there is no longer a perceived medical need to continue the segregation of such an inmate;

(6) Provisions requiring that all health care staff who provide health care services be screened for communicable diseases, including (a) human immunodeficiency virus, (b) hepatitis A virus, (c) hepatitis B virus, and (d) hepatitis C virus, upon their entry into the employment of the department, and that all health care staff also be screened annually for tuberculosis; and

(7) Provisions allowing for employees of the department who come into immediate personal contact with the inmates to be immunized for hepatitis B virus.

**Source:** Laws 2001, LB 154, § 9; Laws 2005, LB 320, § 1.

#### **83-4,162 Drugs; medical treatment protocols.**

The medical director shall develop and implement medical treatment protocols regarding the use of drugs, devices, or biologicals for the treatment of inmates and shall ensure that those protocols are consistent with a community standard of health care. In developing these protocols, the medical director shall ensure that the medical treatment protocols include:

(1) Provisions requiring that only the relevant health care staff is involved in determining the number and dosages of the drugs, devices, or biologicals to be received by inmates under their care;

(2) Provisions establishing a system for monitoring the administration of drugs, devices, or biologicals to ensure that all prescribed drugs, devices, or biologicals are made available to the inmates; and

(3) Provisions establishing a system for monitoring and removing expired drugs, devices, or biologicals within the department's medication inventory which conforms with the requirements of section 71-2413.

**Source:** Laws 2001, LB 154, § 10.

#### **83-4,163 Surgical procedures; medical treatment protocols.**

The medical director shall develop and implement medical treatment protocols for common surgical procedures. In developing these protocols, the medical director shall ensure that the medical treatment protocols include:

(1) Provisions defining procedures that are considered to be major surgery;

(2) Provisions requiring that all inmates needing major surgery are referred to appropriate specialists and facilities outside of the department for that surgery;

(3) Provisions requiring the implementation of pain management measures within an appropriate time after the completion of surgical procedures;

(4) Provisions requiring that all decisions by the health care staff regarding whether or not surgery should be performed are based on a community standard of health care; and

(5) Provisions requiring the health care staff to carefully document the rationale for each of their decisions to resort to surgery or to refrain from surgery as a treatment option.

**Source:** Laws 2001, LB 154, § 11.

#### **83-4,164 Peer review and quality assurance program.**

The peer review and quality assurance program developed and implemented by the medical director shall provide for the ongoing review of the quality of health care services. This peer review and quality assurance program shall be carried out by a peer review and quality assurance panel comprised of medical doctors providing health care services and such other health care staff as the department designates. The peer review and quality assurance program shall be conducted through regular periodic meetings of the peer review and quality assurance panel for the purpose of examining issues pertaining to the quality of health care services. The peer review and quality assurance panel shall also conduct a regular review of selected cases arising in order to identify, critique, and correct errors in the practices and procedures of the health care staff. The peer review and quality assurance panel shall also review (1) all cases in which there has been a death of an inmate and (2) all cases in which there have been deviations from the approved medical treatment protocols of the department. The medical director shall develop and implement a procedure for the direct feedback to the peer review and quality assurance panel of inmate complaints and other information from inmates pertaining to health care services. A permanent record of the meetings and deliberations of the peer review and quality assurance panel shall be maintained, but the records and all other evidence pertaining directly to the deliberations of the peer review and quality assurance panel are not subject to discovery in any civil action arising out of the health care services provided by or on behalf of the department.

**Source:** Laws 2001, LB 154, § 12.

#### **83-4,165 Medical program; accreditation.**

The department shall seek accreditation of its medical program by the American Correctional Association Commission on Accreditation for Corrections.

**Source:** Laws 2001, LB 154, § 13.

### **ARTICLE 5**

#### **STERILIZATION OF INMATES OF BEATRICE STATE HOME**

Section

83-501. Repealed. Laws 1969, c. 825, § 1.

83-502. Repealed. Laws 1969, c. 825, § 1.

Section

- 83-503. Repealed. Laws 1969, c. 825, § 1.
- 83-504. Repealed. Laws 1969, c. 825, § 1.
- 83-505. Repealed. Laws 1969, c. 825, § 1.
- 83-506. Repealed. Laws 1969, c. 825, § 1.
- 83-507. Repealed. Laws 1969, c. 825, § 1.
- 83-508. Repealed. Laws 1969, c. 825, § 1.
- 83-509. Repealed. Laws 1957, c. 391, § 8.

**83-501 Repealed. Laws 1969, c. 825, § 1.**

**83-502 Repealed. Laws 1969, c. 825, § 1.**

**83-503 Repealed. Laws 1969, c. 825, § 1.**

**83-504 Repealed. Laws 1969, c. 825, § 1.**

**83-505 Repealed. Laws 1969, c. 825, § 1.**

**83-506 Repealed. Laws 1969, c. 825, § 1.**

**83-507 Repealed. Laws 1969, c. 825, § 1.**

**83-508 Repealed. Laws 1969, c. 825, § 1.**

**83-509 Repealed. Laws 1957, c. 391, § 8.**

**ARTICLE 6**

**EMINENT DOMAIN BY THE STATE**

Section

- 83-601. Transferred to section 76-725.
- 83-602. Repealed. Laws 1951, c. 101, § 127.
- 83-603. Repealed. Laws 1951, c. 101, § 127.
- 83-604. Repealed. Laws 1951, c. 101, § 127.
- 83-605. Repealed. Laws 1951, c. 101, § 127.
- 83-606. Repealed. Laws 1951, c. 101, § 127.
- 83-607. Repealed. Laws 1951, c. 101, § 127.

**83-601 Transferred to section 76-725.**

**83-602 Repealed. Laws 1951, c. 101, § 127.**

**83-603 Repealed. Laws 1951, c. 101, § 127.**

**83-604 Repealed. Laws 1951, c. 101, § 127.**

**83-605 Repealed. Laws 1951, c. 101, § 127.**

**83-606 Repealed. Laws 1951, c. 101, § 127.**

**83-607 Repealed. Laws 1951, c. 101, § 127.**

**ARTICLE 7**

**DRUG USERS**

Section

- 83-701. Repealed. Laws 1985, LB 252, § 7.
- 83-702. Repealed. Laws 1985, LB 252, § 7.

Section

- 83-703. Repealed. Laws 1985, LB 252, § 7.
- 83-704. Repealed. Laws 1985, LB 252, § 7.
- 83-705. Repealed. Laws 1985, LB 252, § 7.
- 83-706. Repealed. Laws 1985, LB 252, § 7.
- 83-707. Repealed. Laws 1985, LB 252, § 7.

**83-701 Repealed. Laws 1985, LB 252, § 7.**

**83-702 Repealed. Laws 1985, LB 252, § 7.**

**83-703 Repealed. Laws 1985, LB 252, § 7.**

**83-704 Repealed. Laws 1985, LB 252, § 7.**

**83-705 Repealed. Laws 1985, LB 252, § 7.**

**83-706 Repealed. Laws 1985, LB 252, § 7.**

**83-707 Repealed. Laws 1985, LB 252, § 7.**

**ARTICLE 8**

**INTERSTATE COMPACT ON MENTAL HEALTH**

Section

- 83-801. Interstate Compact on Mental Health; contents.
- 83-802. Chief executive officer of Department of Health and Human Services; duties.
- 83-803. Compact administrator; powers.
- 83-804. Compact administrator; arrange for payments to discharge financial obligations.
- 83-805. Compact administrator; consult with family of proposed transferee; transfer; approval of court.
- 83-806. Secretary of State; authorized copies; distribution.

**83-801 Interstate Compact on Mental Health; contents.**

The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein, in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

## Article II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

## Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact

shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving

state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### Article IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or

lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### Article X

(a) Each party state shall appoint a “compact administrator” who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

#### Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

#### Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

#### Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

#### Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining

states and in full force and effect as to the state affected as to all severable matters.

**Source:** Laws 1969, c. 556, § 1, p. 2263.

**83-802 Chief executive officer of Department of Health and Human Services; duties.**

Pursuant to the compact as provided in section 83-801, the chief executive officer of the Department of Health and Human Services or such person as the chief executive officer may designate shall be the compact administrator and shall have the power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

**Source:** Laws 1969, c. 556, § 2, p. 2271; Laws 1996, LB 1044, § 957; Laws 2007, LB296, § 806.

**83-803 Compact administrator; powers.**

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

**Source:** Laws 1969, c. 556, § 3, p. 2271.

**83-804 Compact administrator; arrange for payments to discharge financial obligations.**

The compact administrator, with the approval of the state budget officer and the Governor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

**Source:** Laws 1969, c. 556, § 4, p. 2271.

**83-805 Compact administrator; consult with family of proposed transferee; transfer; approval of court.**

The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without the approval of the court of commitment if the proposed transferee is in a state institution or facility pursuant to an order of a court.

**Source:** Laws 1969, c. 556, § 5, p. 2271.

**83-806 Secretary of State; authorized copies; distribution.**

Duly authorized copies of sections 83-801 to 83-806 shall, upon their approval be transmitted by the Secretary of State to the Governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments.

**Source:** Laws 1969, c. 556, § 6, p. 2272.

## ARTICLE 9

### DEPARTMENT OF CORRECTIONAL SERVICES

#### Cross References

**Facilities for committed persons**, see sections 83-108.02 and 83-108.04.

**For other provisions relating to the Department of Correctional Services**, see Chapter 81, article 1, and Chapter 83, article 1.

**Incarceration work camps**, see sections 83-4,142 to 83-4,147.

**Nebraska Treatment and Corrections Act**, see section 83-1,135.

**Persons on parole, probation, or work release**, employment restrictions, see section 29-2262.01.

#### (a) GENERAL PROVISIONS

Section	
83-901.	Sections; purpose.
83-902.	Department of Correctional Services; seal; certification of documents.
83-903.	Repealed. Laws 1993, LB 31, § 83; Laws 1993, LB 109, § 1.
83-904.	Repealed. Laws 1993, LB 31, § 83.
83-905.	Department; control of adult corrections and secure youth facility.
83-905.01.	Repealed. Laws 2002, Second Spec. Sess., LB 1, § 15.
83-906.	Repealed. Laws 1993, LB 31, § 83.
83-907.	Repealed. Laws 1981, LB 545, § 52.
83-908.	Department of Correctional Services; estimate of appropriations; prepare.
83-909.	Department; gather information; encourage scientific investigation.
83-909.01.	Repealed. Laws 1993, LB 31, § 83.
83-910.	Director; employees; inquiries to determine fitness for duties; investigation and report to Governor.
83-911.	Director; information for Legislature.
83-911.01.	Transferred to section 83-925.11.
83-912.	Director, employee; no gift or gratuity; violation; removal from office.
83-913.	Cash received; remit to State Treasurer; report to department.
83-913.01.	Department of Correctional Services Facility Cash Fund; created; how funded; investment; disbursements; how made.
83-914.	Emergency Revolving Fund; funding; accounting.
83-915.	Trust funds; investment; income; use.
83-915.01.	Inmate Welfare and Club Accounts Fund; created; use; investment.
83-916.	Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond.
83-917.	Repealed. Laws 1993, LB 31, § 83.
83-918.	Repealed. Laws 1987, LB 11, § 1.
83-919.	Repealed. Laws 1987, LB 11, § 1.
83-920.	Repealed. Laws 1987, LB 11, § 1.
83-921.	Repealed. Laws 1987, LB 11, § 1.
83-922.	Department of Correctional Services; duties; divisions enumerated.
83-923.	Repealed. Laws 1993, LB 31, § 83.
83-924.	Assistant director; duties, powers, and responsibilities.
83-924.01.	Repealed. Laws 1987, LB 12, § 1.

#### (b) OFFICE OF JUVENILE SERVICES

83-925.	Repealed. Laws 1994, LB 988, § 47.
83-925.01.	Transferred to section 43-402.
83-925.02.	Transferred to section 43-404.
83-925.03.	Repealed. Laws 1998, LB 1073, § 179.
83-925.04.	Repealed. Laws 1998, LB 1073, § 179.
83-925.05.	Repealed. Laws 1998, LB 1073, § 179.
83-925.06.	Transferred to section 43-407.
83-925.07.	Transferred to section 43-406.

## STATE INSTITUTIONS

### Section

- 83-925.08. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.09. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.10. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.11. Repealed. Laws 1998, LB 1073, § 179.
- 83-925.12. Transferred to section 43-408.
- 83-925.13. Transferred to section 43-411.
- 83-926. Repealed. Laws 1994, LB 988, § 47.
- 83-927. Repealed. Laws 1994, LB 988, § 47.
- 83-928. Repealed. Laws 1994, LB 988, § 47.
- 83-929. Repealed. Laws 1994, LB 988, § 47.
- 83-930. Repealed. Laws 1994, LB 988, § 47.

### (c) DIVISION OF COMMUNITY-CENTERED SERVICES

- 83-931. Assistant director of the Division of Community-Centered Services; qualifications.
- 83-932. Division of Community-Centered Services; duties.
- 83-933. Division of Community-Centered Services; Office of Parole Administration; Parole Administrator; duties.
- 83-934. Repealed. Laws 1993, LB 31, § 83.

### (d) DIVISION OF ADULT SERVICES

- 83-935. Repealed. Laws 1993, LB 31, § 83.
- 83-936. Adult Diagnostic and Evaluation Services Program; duties.
- 83-937. Repealed. Laws 1993, LB 31, § 83.
- 83-938. Division of Adult Services; assistant director; qualifications.
- 83-939. Division of Adult Services; duties.
- 83-940. Repealed. Laws 1993, LB 31, § 83.
- 83-941. Repealed. Laws 1993, LB 31, § 83.

### (e) DIVISION OF ADMINISTRATIVE SERVICES

- 83-942. Division of Administrative Services; assistant director; qualifications.
- 83-943. Division of Administrative Services; duties.
- 83-944. Repealed. Laws 1992, LB 1184, § 25.

### (f) CRIMINAL DETENTION FACILITIES

- 83-945. Transferred to section 83-4,124.
- 83-946. Transferred to section 83-4,125.
- 83-947. Repealed. Laws 1978, LB 212, § 13.
- 83-948. Transferred to section 83-4,126.
- 83-948.01. Transferred to section 83-4,127.
- 83-948.02. Transferred to section 83-4,128.
- 83-948.03. Transferred to section 83-4,129.
- 83-948.04. Transferred to section 83-4,130.
- 83-949. Repealed. Laws 1978, LB 212, § 13.
- 83-950. Transferred to section 83-4,131.
- 83-951. Transferred to section 83-4,132.
- 83-952. Transferred to section 83-4,133.
- 83-953. Transferred to section 83-4,134.
- 83-954. Medium-minimum correctional facilities; where located; how designed; cost; duties of Department of Correctional Services.
- 83-955. Repealed. Laws 1982, LB 592, § 2.

### (g) TRANSFER OF FOREIGN OFFENDERS

- 83-956. Treaty; transfer of convicted offenders to foreign countries; Director of Correctional Services; duties.

### (h) CENTRAL WAREHOUSE SYSTEM

- 83-957. Central warehouse system; authorized.
- 83-958. Department of Correctional Services Warehouse Revolving Fund; created; use; investment.
- 83-959. Separate budget programs required.

## Section

## (i) CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

- 83-960. Act, how cited.  
 83-961. Terms, defined.  
 83-962. Governor; declaration of emergency; when; effect.  
 83-963. Department; annual report; contents.

## (a) GENERAL PROVISIONS

**83-901 Sections; purpose.**

The purpose of sections 49-617, 68-621, 72-249, 72-1302 to 72-1304, 81-101, 81-102, 81-1021, 83-101.08, 83-107.01, 83-108, 83-108.04, 83-112, 83-135, 83-139, 83-140, 83-144, 83-145, 83-147 to 83-150, 83-153 to 83-156, 83-170 to 83-173, 83-186, 83-188, 83-443, and 83-901 to 83-916 is to establish an agency of state government for the custody, study, care, discipline, training, and treatment of persons in the correctional and detention institutions and for the study, training, and treatment of persons under the supervision of other correctional services of the state so that they may be prepared for lawful community living. Correctional services shall be so diversified in program and personnel as to facilitate individualization of treatment.

**Source:** Laws 1973, LB 563, § 53; Laws 1996, LB 1044, § 958; Laws 1997, LB 307, § 228; Laws 1998, LB 1073, § 168; Laws 2007, LB256, § 14.

**Cross References**

**Department of Correctional Services**, created, see sections 81-101 and 83-171.

**Director of Correctional Services**, appointment, salary, qualifications, see sections 81-102 and 83-172.

**83-902 Department of Correctional Services; seal; certification of documents.**

The Department of Correctional Services shall adopt a seal. Copies of all records or other instruments in the department, when certified by the department as true copies and bearing the seal thereof, shall be received in any court as prima facie evidence of the original records or instruments.

**Source:** Laws 1973, LB 563, § 54.

**83-903 Repealed. Laws 1993, LB 31, § 83; Laws 1993, LB 109, § 1.****83-904 Repealed. Laws 1993, LB 31, § 83.****83-905 Department; control of adult corrections and secure youth facility.**

The Department of Correctional Services shall have oversight and general control of all state adult correctional institutions and the secure youth facility. The Secure Youth Confinement Facility is a physically secure, coeducational facility designed to provide secure confinement, education, and treatment only for serious and chronic juvenile offenders who have been committed to the Department of Correctional Services for secure care.

**Source:** Laws 1973, LB 563, § 57; Laws 1974, LB 994, § 1; Laws 1980, LB 794, § 4; Laws 1993, LB 31, § 65; Laws 1994, LB 988, § 40; Laws 1997, LB 882, § 9.

**83-905.01 Repealed. Laws 2002, Second Spec. Sess., LB 1, § 15.**

**83-906 Repealed. Laws 1993, LB 31, § 83.**

**83-907 Repealed. Laws 1981, LB 545, § 52.**

**83-908 Department of Correctional Services; estimate of appropriations; prepare.**

The Department of Correctional Services shall prepare an estimate of the appropriations necessary for the support and needed improvements of the institutions under its charge, and a report of their operation during the preceding year, for the use of the Legislature. The estimate shall be printed, and may include a report of the results of investigation of methods of institution management and of treatment of patients and inmates, with suggestions for the betterment of any or all conditions.

**Source:** Laws 1973, LB 563, § 60.

**83-909 Department; gather information; encourage scientific investigation.**

The Department of Correctional Services shall gather demographic information for statistical reporting purposes, shall encourage scientific investigation of the treatment of delinquency and crime, shall provide forms for statistical returns to be made by the institutions in their annual reports, and shall supervise the methods of care, treatment, education, and improvement of the inmates of the institutions under its control.

**Source:** Laws 1973, LB 563, § 61; Laws 1979, LB 322, § 70; Laws 1981, LB 545, § 46; Laws 1993, LB 31, § 66.

**83-909.01 Repealed. Laws 1993, LB 31, § 83.**

**83-910 Director; employees; inquiries to determine fitness for duties; investigation and report to Governor.**

The Director of Correctional Services may examine any employee of the Department of Correctional Services and make such inquiries as will determine the employee's fitness for his or her respective duties, and the director shall investigate and report to the Governor any abuses or wrongs alleged to exist in the department.

**Source:** Laws 1973, LB 563, § 62; Laws 1993, LB 31, § 67.

**83-911 Director; information for Legislature.**

The Director of Correctional Services shall be prepared to give any information desired by the Legislature concerning the institutions under his control, and his administration shall be subject to examination under oath by a legislative committee touching any matter in regard to which the Legislature may desire information concerning the condition of the institutions, their inmates, and the performance of their duties by the director or his employees. The committee may call and examine under oath any other persons as witnesses in such investigation. Such examinations shall be conducted in the manner and subject to the provisions of section 83-114.

**Source:** Laws 1973, LB 563, § 63.

**83-911.01 Transferred to section 83-925.11.****83-912 Director, employee; no gift or gratuity; violation; removal from office.**

Neither the Director of Correctional Services nor any employee of the Department of Correctional Services shall receive from any person, firm, or corporation having dealings with the department, or from any employee or representative of such person, firm, or corporation, any gift or gratuity, either directly or indirectly, for himself or for any other person. The director or any employee who receives such a gift or gratuity shall be deemed guilty of bribery under section 28-917 and shall be removed from office.

**Source:** Laws 1973, LB 563, § 64; Laws 1978, LB 748, § 48.

**83-913 Cash received; remit to State Treasurer; report to department.**

All money derived from any source in any institution controlled by the Department of Correctional Services shall be remitted to the State Treasurer by the proper executive officer on the first day of each month. Detailed reports showing the source of all money received shall be made to the department every thirty days.

**Source:** Laws 1973, LB 563, § 65.

**83-913.01 Department of Correctional Services Facility Cash Fund; created; how funded; investment; disbursements; how made.**

(1) There is hereby created the Department of Correctional Services Facility Cash Fund.

Except as otherwise provided, all money derived from any source in any facility under the supervision of the Department of Correctional Services shall be remitted to the State Treasurer in accordance with the policies and procedures established by the Director of Correctional Services for credit to the fund. Any money in the fund available for investment may be invested pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) All disbursements from the fund shall be made by the Director of Administrative Services by warrants drawn on the fund only upon certification of expenses by the chief executive officer of the appropriate facility within the Department of Correctional Services and upon presentation of proper vouchers for such expenses by the Director of Correctional Services or his or her authorized agent.

**Source:** Laws 1976, LB 869, § 1; Laws 1993, LB 31, § 68; Laws 1994, LB 1066, § 130.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**83-914 Emergency Revolving Fund; funding; accounting.**

An Emergency Revolving Fund, not to exceed six thousand dollars for any one institution or the central office of the Department of Correctional Services, upon order of the Director of Correctional Services, shall be drawn from the State Treasurer, to be used by the chief executive officer of each institution or the central office as an emergency cash fund. The fund shall be drawn from the

general maintenance appropriation for the director. An accounting of such fund shall be made by each executive officer once each month to the director.

**Source:** Laws 1973, LB 563, § 66; Laws 1976, LB 581, § 2.

**83-915 Trust funds; investment; income; use.**

The Department of Correctional Services shall invest any surplus trust funds belonging to inmates in its custody with the state investment officer. The interest accruing from any investments shall be credited to the Inmate Welfare and Club Accounts Fund created under section 83-915.01. The department shall also provide inmates with the option of having an interest-earning savings account and shall notify the inmates of such option and the terms of such account.

**Source:** Laws 1973, LB 563, § 67; Laws 1980, LB 698, § 1; Laws 2002, LB 604, § 1.

**83-915.01 Inmate Welfare and Club Accounts Fund; created; use; investment.**

The Inmate Welfare and Club Accounts Fund is created. The fund shall consist of revenue from soft drinks sold to inmates in the custody of the Department of Correctional Services, profit from departmental canteens, interest earned by the fund, interest on inmate trust funds pursuant to section 83-915, or other revenue at the department's discretion. The fund shall be used to provide recreational activities and equipment for inmates at all of the department's correctional facilities. The fund shall be administered by the Director of Correctional Services or his or her designee. Any money in the 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.

**Source:** Laws 2002, LB 604, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**83-916 Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond.**

(1) The Department of Correctional Services shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than fifty thousand dollars, exclusive of equipment not germane to construction and building material made in the institution, shall be (a) constructed under the general charge of the department as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (5) of this section, except that buildings costing more than fifty thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed on the grounds of any Department of Correctional Services adult correctional facility, may be constructed by the use of inmate labor. Any construction by inmate labor shall have

the approval of the department, the warden, and the chief engineer of the department.

(3) Inmate labor or the labor of state charges shall be employed, whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder at the letting referred to in subsection (2) of this section shall enter into a formal contract with the department, prepared as provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department as provided for by subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the Department of Correctional Services at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract.

**Source:** Laws 1973, LB 563, § 68; Laws 1990, LB 257, § 6; Laws 1993, LB 31, § 69; Laws 1995, LB 530, § 18; Laws 2007, LB256, § 15.

**83-917 Repealed. Laws 1993, LB 31, § 83.**

**83-918 Repealed. Laws 1987, LB 11, § 1.**

**83-919 Repealed. Laws 1987, LB 11, § 1.**

**83-920 Repealed. Laws 1987, LB 11, § 1.**

**83-921 Repealed. Laws 1987, LB 11, § 1.**

**83-922 Department of Correctional Services; duties; divisions enumerated.**

The Department of Correctional Services shall fulfill those functions of state government relating to the custody, study, care, discipline, training, and treatment of persons in correctional and detention institutions. There shall be separate divisions within the department to assist in fulfilling these functions. The divisions shall be the Division of Community-Centered Services, the Division of Administrative Services, and the Division of Adult Services. The Director of Correctional Services shall appoint an assistant director as head of each division and may remove or change the powers and responsibilities of the assistant director of any of the divisions at his or her discretion.

**Source:** Laws 1975, LB 417, § 1; Laws 1993, LB 31, § 70; Laws 1994, LB 988, § 42; Laws 1996, LB 1044, § 959.

**83-923 Repealed. Laws 1993, LB 31, § 83.****83-924 Assistant director; duties, powers, and responsibilities.**

Subject to the supervision and approval of the Director of Correctional Services, each assistant director shall have the following duties, powers, and responsibilities:

(1) To coordinate and direct all programs and facilities under his or her jurisdiction;

(2) To select and manage such staff and supervise the operation of such equipment as he or she may require;

(3) To make such revisions to internal systems in each division as may be necessary to promote economy and facilitate maximum utilization of existing correctional services and facilities;

(4) To cause any existing program and facilities to be utilized by or merged with those of any other division in order to provide for greater efficiency or achieve any economic advantage;

(5) To provide the Legislature and the Governor technical assistance, advice, and information concerning administrative operations within his or her division;

(6) To provide the Legislature and the Governor with recommendations for dealing with financial, management, and organization problems affecting his or her division; and

(7) To exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1975, LB 417, § 3; Laws 1993, LB 31, § 71.

**83-924.01 Repealed. Laws 1987, LB 12, § 1.**

## (b) OFFICE OF JUVENILE SERVICES

**83-925 Repealed. Laws 1994, LB 988, § 47.****83-925.01 Transferred to section 43-402.****83-925.02 Transferred to section 43-404.****83-925.03 Repealed. Laws 1998, LB 1073, § 179.****83-925.04 Repealed. Laws 1998, LB 1073, § 179.****83-925.05 Repealed. Laws 1998, LB 1073, § 179.****83-925.06 Transferred to section 43-407.****83-925.07 Transferred to section 43-406.****83-925.08 Repealed. Laws 1998, LB 1073, § 179.****83-925.09 Repealed. Laws 1998, LB 1073, § 179.****83-925.10 Repealed. Laws 1998, LB 1073, § 179.****83-925.11 Repealed. Laws 1998, LB 1073, § 179.**

**83-925.12** Transferred to section 43-408.

**83-925.13** Transferred to section 43-411.

**83-926** Repealed. Laws 1994, LB 988, § 47.

**83-927** Repealed. Laws 1994, LB 988, § 47.

**83-928** Repealed. Laws 1994, LB 988, § 47.

**83-929** Repealed. Laws 1994, LB 988, § 47.

**83-930** Repealed. Laws 1994, LB 988, § 47.

(c) DIVISION OF COMMUNITY-CENTERED SERVICES

**83-931 Assistant director of the Division of Community-Centered Services; qualifications.**

The Director of Correctional Services shall appoint as assistant director of the Division of Community-Centered Services any person who has an appropriate academic background and adequate training and experience in corrections.

**Source:** Laws 1975, LB 417, § 9; Laws 1993, LB 31, § 77.

**83-932 Division of Community-Centered Services; duties.**

The Division of Community-Centered Services shall:

- (1) Coordinate all adult parole programs and services in the state and supervise the administration of such programs and services;
- (2) Cooperate with the Division of Adult Services in the coordination of volunteer programs in the adult correctional facilities;
- (3) Coordinate and supervise community educational programs to increase community awareness and understanding of the community rehabilitative programs of the division; and
- (4) Perform all duties necessary to carry out the provisions of this section.

**Source:** Laws 1975, LB 417, § 10; Laws 1993, LB 31, § 78.

**83-933 Division of Community-Centered Services; Office of Parole Administration; Parole Administrator; duties.**

The Office of Parole Administration shall be within the Division of Community-Centered Services. Subject to the supervision of the assistant director of the division, the Parole Administrator shall be charged with the administration of parole services in the community pursuant to the provisions of section 83-1,102, implementation and administration of the Interstate Compact for Adult Offender Supervision as it affects parolees, community supervision of sex offenders pursuant to section 83-174.03, and supervision of parolees either paroled in Nebraska and supervised in another state or paroled in another state and supervised in Nebraska, pursuant to the compact.

**Source:** Laws 1975, LB 417, § 11; Laws 1993, LB 31, § 79; Laws 2003, LB 46, § 30; Laws 2006, LB 1199, § 105.

**Note:** Laws 2003, LB 46, section 51, provided this section became operative "when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision". By June 2002, the compact had reached this threshold. (see [www.adultcompact.org](http://www.adultcompact.org)) LB 46 became effective May 24, 2003.

## Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.

**83-934 Repealed. Laws 1993, LB 31, § 83.**

## (d) DIVISION OF ADULT SERVICES

**83-935 Repealed. Laws 1993, LB 31, § 83.****83-936 Adult Diagnostic and Evaluation Services Program; duties.**

There is hereby established the Adult Diagnostic and Evaluation Services Program within the Division of Adult Services. Subject to the supervision of the assistant director of the division, the program shall:

- (1) Establish programs for the observation, testing, and examination, both mental and physical, of adult individuals within the jurisdiction of the Department of Correctional Services;
- (2) Recommend treatment for and disposition of adult individuals within the jurisdiction of the department; and
- (3) Cooperate with the division to establish and maintain rehabilitation programs for individuals committed or referred to any institution within the division.

**Source:** Laws 1975, LB 417, § 14; Laws 1993, LB 31, § 80.

**83-937 Repealed. Laws 1993, LB 31, § 83.****83-938 Division of Adult Services; assistant director; qualifications.**

The Director of Correctional Services shall appoint as assistant director of the Division of Adult Services any person who shall have an appropriate background in adult institutional correctional programs and adequate training and experience in correctional administrative work.

**Source:** Laws 1975, LB 417, § 15.

**83-939 Division of Adult Services; duties.**

The Division of Adult Services shall:

- (1) Establish, administer, and supervise all correctional facilities designed to house adult offenders;
- (2) Establish and maintain the Adult Diagnostic and Evaluation Services Program;
- (3) Develop and coordinate with the assistance of the Division of Community-Centered Services, volunteer programs within adult correctional facilities; and
- (4) Perform any other duties assigned by the Director of Correctional Services.

**Source:** Laws 1975, LB 417, § 16; Laws 1986, LB 481, § 2; Laws 1993, LB 31, § 81.

**83-940 Repealed. Laws 1993, LB 31, § 83.****83-941 Repealed. Laws 1993, LB 31, § 83.**

## (e) DIVISION OF ADMINISTRATIVE SERVICES

**83-942 Division of Administrative Services; assistant director; qualifications.**

The Director of Correctional Services shall appoint as assistant director of the Division of Administrative Services any person who shall have a thorough academic background and practical experience in correctional administrative work.

**Source:** Laws 1975, LB 417, § 20.

**83-943 Division of Administrative Services; duties.**

The Division of Administrative Services shall coordinate and supervise services available to all divisions of the Department of Correctional Services from a centralized location within the department. Such services shall include:

(1) Providing technical assistance on budget preparation, accounting procedures, federal funding administration, procurement, and inventory;

(2) Providing assistance in the total concept of human resource management involving staffing, recruitment, and evaluation and establishing and maintaining inservice training programs for existing programs as well as future programs;

(3) Providing technical assistance in the planning and development of new capital construction projects and supervising maintenance functions for all facilities within the department;

(4) Providing data collection and analysis from Nebraska and other states to assist the director in the formulation of current and future corrections policy and to justify budgetary needs to implement policy decisions, and developing standards for evaluation of corrections programs to better evaluate social worth and budgetary performance;

(5) Design and implementation of a comprehensive data record system for the disposition of the criminal records of adult inmates in the state; and

(6) Performance of other duties assigned by the Director of Correctional Services.

**Source:** Laws 1975, LB 417, § 21; Laws 1993, LB 31, § 82.

**83-944 Repealed. Laws 1992, LB 1184, § 25.**

## (f) CRIMINAL DETENTION FACILITIES

**83-945 Transferred to section 83-4,124.**

**83-946 Transferred to section 83-4,125.**

**83-947 Repealed. Laws 1978, LB 212, § 13.**

**83-948 Transferred to section 83-4,126.**

**83-948.01 Transferred to section 83-4,127.**

**83-948.02 Transferred to section 83-4,128.**

**83-948.03 Transferred to section 83-4,129.**

**83-948.04 Transferred to section 83-4,130.**

**83-949 Repealed. Laws 1978, LB 212, § 13.**

**83-950 Transferred to section 83-4,131.**

**83-951 Transferred to section 83-4,132.**

**83-952 Transferred to section 83-4,133.**

**83-953 Transferred to section 83-4,134.**

**83-954 Medium-minimum correctional facilities; where located; how designed; cost; duties of Department of Correctional Services.**

(1) The Department of Correctional Services is hereby authorized to revise program statements, develop physical plans, and initiate construction for two medium-minimum facilities with a total project cost not to exceed nine million dollars.

The revised program statements and physical plans shall provide for one medium-minimum security correctional facility to be located in Lancaster County and an additional facility to be located in Douglas County.

(2) The correctional facility to be located in Lancaster County may be built at the present site of the men's reformatory in Lincoln, Nebraska, and shall be designed to house two hundred persons. The ancillary services shall be designed to provide for future expansion to serve an additional fifty persons. Total project cost for the medium-minimum correctional facility to be located in Lancaster County shall not exceed five million dollars. Construction shall begin not later than July 1, 1976.

(3) The medium-minimum correctional facility to be located in Douglas County shall be designed to house one hundred seventy-five persons. Ancillary services shall be designed to provide for future expansion to serve an additional twenty-five persons. Total project cost for the medium-minimum correctional facility to be located in Douglas County shall not exceed four million dollars. It is the intent of the Legislature that construction begin not later than January 1, 1977.

(4) The Department of Correctional Services shall develop a program statement and preliminary plans for a maximum security facility designed to accommodate not more than two hundred fifty persons. The program statement shall include an assessment of the current facility's location and structure, and a determination as to the adequacy of such facility when compared to complete replacement and relocation.

(5) In planning the construction of these new correctional facilities, consideration shall be given to providing separate, noncell-type housing units. Each correctional facility shall also include adequate space for administrative offices, kitchen, and dining facilities, and other space necessary for the efficient operation of the facility.

**Source:** Laws 1975, LB 417, § 38.

**83-955 Repealed. Laws 1982, LB 592, § 2.**

## (g) TRANSFER OF FOREIGN OFFENDERS

**83-956 Treaty; transfer of convicted offenders to foreign countries; Director of Correctional Services; duties.**

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty, authorize the Director of Correctional Services to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this state in the treaty.

**Source:** Laws 1980, LB 808, § 1.

## (h) CENTRAL WAREHOUSE SYSTEM

**83-957 Central warehouse system; authorized.**

The Department of Correctional Services is authorized to develop a central warehouse system for the ordering, purchasing, delivering, and billing for facilities and programs within the Department of Correctional Services of items stocked in the central warehouse system. The central warehouse system shall operate separately and distinctly from other department revolving-funded operations.

**Source:** Laws 1999, LB 873, § 8.

**83-958 Department of Correctional Services Warehouse Revolving Fund; created; use; investment.**

There is hereby created the Department of Correctional Services Warehouse Revolving Fund. This fund shall only be used for the purchase of items to be resold at cost to facilities and programs within the Department of Correctional Services. Facilities and programs within the department receiving items from the central warehouse system shall be billed for such goods at the time of delivery. All receipts from the items sold through the central warehouse system shall be deposited in the fund. The fund shall be administered by the Director of Correctional Services. Any money in the 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.

**Source:** Laws 1999, LB 873, § 9.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**83-959 Separate budget programs required.**

The budget division of the Department of Administrative Services shall administratively create a separate budget program classification within the Department of Correctional Services to properly account for revenue and disbursements of items stocked and sold by the central warehouse system. The Department of Correctional Services shall track the operating expenses of the central warehouse system within a separate budget subprogram within the central office budget.

**Source:** Laws 1999, LB 873, § 10.

## (i) CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

**83-960 Act, how cited.**

Sections 83-960 to 83-963 shall be known and may be cited as the Correctional System Overcrowding Emergency Act.

**Source:** Laws 2003, LB 46, § 46.

**83-961 Terms, defined.**

For purposes of the Correctional System Overcrowding Emergency Act:

- (1) Board means the Board of Parole;
- (2) Committed offender has the definition found in section 83-170;
- (3) Department means the Department of Correctional Services;
- (4) Design capacity means the total designed bed space in facilities operated by the department, as certified by the director;
- (5) Director means the Director of Correctional Services;
- (6) Operational capacity means one hundred twenty-five percent of design capacity;
- (7) Population means the actual number of inmates assigned to facilities operated by the department and does not include inmates assigned to county-operated correctional institutions; and
- (8) Violent offense means any one or more of the following crimes: Murder in the first degree, murder in the second degree, manslaughter, assault in the first degree, kidnapping, sexual assault in the first degree, or robbery.

**Source:** Laws 2003, LB 46, § 47.

**83-962 Governor; declaration of emergency; when; effect.**

(1) The Governor may declare a correctional system overcrowding emergency whenever the director certifies that the population is over one hundred forty percent of design capacity. The director shall so certify within thirty days after the date on which the population first exceeds one hundred forty percent of design capacity.

(2) Upon declaration of a correctional system overcrowding emergency, the board shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole.

(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that such release should be deferred because:

(a) The board has determined that it is more likely than not that the committed offender will not conform to the conditions of parole;

(b) The board has determined that release of the committed offender would have a very significant and quantifiable effect on institutional discipline; or

(c) The board has determined that there is a very substantial risk that the committed offender will commit a violent act against a person.

(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in subsection (2) of section 83-1,114.

(5) The board shall continue granting parole to offenders under this section until the director certifies that the population is at operational capacity. The director shall so certify within thirty days after the date on which the population first reaches operational capacity.

**Source:** Laws 2003, LB 46, § 48.

**83-963 Department; annual report; contents.**

The department shall prepare an annual report on committed offenders who are paroled or granted controlled release pursuant to the Correctional System Overcrowding Emergency Act. The report shall summarize each such former committed offender's behavior since parole and generally evaluate his or her success or lack of success in becoming a law-abiding member of society. The annual report shall be filed with the Executive Board of the Legislative Council on or before December 31, with the first such report submitted by December 31 of the first year that committed offenders are paroled pursuant to the act. A notice of the filing of the report shall be submitted to each member of the Legislature when the annual report is filed with the Executive Board.

**Source:** Laws 2003, LB 46, § 49.

**ARTICLE 10**

**MENTAL HEALTH COMMITMENT AND RELEASE**

**Cross References**

For other provisions relating to mental health and regional centers, see Chapter 83, article 3.

(a) NEBRASKA MENTAL HEALTH COMMITMENT ACT

Section	
83-1001.	Transferred to section 71-902.
83-1002.	Transferred to section 71-903.
83-1003.	Repealed. Laws 2004, LB 1083, § 149.
83-1004.	Transferred to section 71-905.
83-1005.	Transferred to section 71-904.
83-1006.	Transferred to section 71-914.
83-1007.	Transferred to section 71-911.
83-1007.01.	Transferred to section 71-909.
83-1008.	Repealed. Laws 2004, LB 1083, § 149.
83-1009.	Transferred to section 71-908.
83-1009.01.	Transferred to section 71-907.
83-1009.02.	Transferred to section 71-913.
83-1010.	Transferred to section 71-906.
83-1011.	Transferred to section 71-910.
83-1012.	Repealed. Laws 2004, LB 1083, § 149.
83-1013.	Repealed. Laws 2004, LB 1083, § 149.
83-1014.	Transferred to section 71-912.
83-1015.	Repealed. Laws 2004, LB 1083, § 149.
83-1016.	Transferred to section 71-917.
83-1017.	Transferred to section 71-915.
83-1018.	Repealed. Laws 2004, LB 1083, § 149.
83-1019.	Transferred to section 71-918.
83-1020.	Transferred to section 71-919.
83-1021.	Repealed. Laws 2004, LB 1083, § 149.
83-1022.	Repealed. Laws 2004, LB 1083, § 149.
83-1023.	Repealed. Laws 2004, LB 1083, § 149.

## STATE INSTITUTIONS

Section	
83-1024.	Transferred to section 71-921.
83-1025.	Repealed. Laws 2004, LB 1083, § 149.
83-1026.	Transferred to section 71-922.
83-1027.	Transferred to section 71-923.
83-1028.	Repealed. Laws 2004, LB 1083, § 149.
83-1029.	Repealed. Laws 2004, LB 1083, § 149.
83-1030.	Repealed. Laws 1981, LB 95, § 30.
83-1031.	Repealed. Laws 1981, LB 95, § 30.
83-1032.	Repealed. Laws 1981, LB 95, § 30.
83-1033.	Repealed. Laws 1981, LB 95, § 30.
83-1034.	Repealed. Laws 1981, LB 95, § 30.
83-1035.	Transferred to section 71-924.
83-1036.	Repealed. Laws 2004, LB 1083, § 149.
83-1037.	Transferred to section 71-925.
83-1038.	Repealed. Laws 2004, LB 1083, § 149.
83-1039.	Transferred to section 71-926.
83-1040.	Repealed. Laws 2004, LB 1083, § 149.
83-1041.	Transferred to section 71-927.
83-1042.	Transferred to section 71-928.
83-1043.	Transferred to section 71-930.
83-1044.	Transferred to section 71-931.
83-1044.01.	Repealed. Laws 2004, LB 1083, § 149.
83-1045.	Transferred to section 71-932.
83-1045.01.	Transferred to section 71-933.
83-1045.02.	Transferred to section 71-934.
83-1046.	Transferred to section 71-935.
83-1047.	Transferred to section 71-943.
83-1048.	Transferred to section 71-944.
83-1049.	Transferred to section 71-945.
83-1050.	Transferred to section 71-946.
83-1051.	Transferred to section 71-947.
83-1052.	Transferred to section 71-948.
83-1053.	Transferred to section 71-949.
83-1054.	Transferred to section 71-950.
83-1055.	Transferred to section 71-951.
83-1056.	Transferred to section 71-952.
83-1057.	Transferred to section 71-953.
83-1058.	Transferred to section 71-954.
83-1059.	Transferred to section 71-955.
83-1060.	Transferred to section 71-956.
83-1061.	Transferred to section 71-957.
83-1062.	Transferred to section 71-958.
83-1063.	Repealed. Laws 1981, LB 95, § 30.
83-1064.	Transferred to section 71-960.
83-1065.	Repealed. Laws 2004, LB 1083, § 149.
83-1066.	Transferred to section 71-959.
83-1067.	Repealed. Laws 2004, LB 1083, § 149.
83-1068.	Transferred to section 71-961.
83-1069.	Transferred to section 71-962.
83-1070.	Repealed. Laws 2004, LB 1083, § 149.
83-1071.	Transferred to section 71-939.
83-1072.	Transferred to section 71-940.
83-1073.	Transferred to section 71-941.
83-1074.	Transferred to section 71-942.
83-1075.	Repealed. Laws 1982, LB 592, § 2.
83-1076.	Repealed. Laws 1982, LB 592, § 2.
83-1077.	Repealed. Laws 1982, LB 592, § 2.
83-1077.01.	Repealed. Laws 2004, LB 1083, § 149.
83-1078.	Transferred to section 71-901.

Section

(b) RELEASE PROVISIONS

- 83-1079. Transferred to section 71-937.
- 83-1080. Transferred to section 71-938.
- 83-1081. Repealed. Laws 1992, LB 523, § 18.

(a) NEBRASKA MENTAL HEALTH COMMITMENT ACT

- 83-1001 Transferred to section 71-902.**
- 83-1002 Transferred to section 71-903.**
- 83-1003 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1004 Transferred to section 71-905.**
- 83-1005 Transferred to section 71-904.**
- 83-1006 Transferred to section 71-914.**
- 83-1007 Transferred to section 71-911.**
- 83-1007.01 Transferred to section 71-909.**
- 83-1008 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1009 Transferred to section 71-908.**
- 83-1009.01 Transferred to section 71-907.**
- 83-1009.02 Transferred to section 71-913.**
- 83-1010 Transferred to section 71-906.**
- 83-1011 Transferred to section 71-910.**
- 83-1012 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1013 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1014 Transferred to section 71-912.**
- 83-1015 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1016 Transferred to section 71-917.**
- 83-1017 Transferred to section 71-915.**
- 83-1018 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1019 Transferred to section 71-918.**
- 83-1020 Transferred to section 71-919.**
- 83-1021 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1022 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1023 Repealed. Laws 2004, LB 1083, § 149.**
- 83-1024 Transferred to section 71-921.**

- 83-1025 Repealed. Laws 2004, LB 1083, § 149.
- 83-1026 Transferred to section 71-922.
- 83-1027 Transferred to section 71-923.
- 83-1028 Repealed. Laws 2004, LB 1083, § 149.
- 83-1029 Repealed. Laws 2004, LB 1083, § 149.
- 83-1030 Repealed. Laws 1981, LB 95, § 30.
- 83-1031 Repealed. Laws 1981, LB 95, § 30.
- 83-1032 Repealed. Laws 1981, LB 95, § 30.
- 83-1033 Repealed. Laws 1981, LB 95, § 30.
- 83-1034 Repealed. Laws 1981, LB 95, § 30.
- 83-1035 Transferred to section 71-924.
- 83-1036 Repealed. Laws 2004, LB 1083, § 149.
- 83-1037 Transferred to section 71-925.
- 83-1038 Repealed. Laws 2004, LB 1083, § 149.
- 83-1039 Transferred to section 71-926.
- 83-1040 Repealed. Laws 2004, LB 1083, § 149.
- 83-1041 Transferred to section 71-927.
- 83-1042 Transferred to section 71-928.
- 83-1043 Transferred to section 71-930.
- 83-1044 Transferred to section 71-931.
- 83-1044.01 Repealed. Laws 2004, LB 1083, § 149.
- 83-1045 Transferred to section 71-932.
- 83-1045.01 Transferred to section 71-933.
- 83-1045.02 Transferred to section 71-934.
- 83-1046 Transferred to section 71-935.
- 83-1047 Transferred to section 71-943.
- 83-1048 Transferred to section 71-944.
- 83-1049 Transferred to section 71-945.
- 83-1050 Transferred to section 71-946.
- 83-1051 Transferred to section 71-947.
- 83-1052 Transferred to section 71-948.

- 83-1053 Transferred to section 71-949.
- 83-1054 Transferred to section 71-950.
- 83-1055 Transferred to section 71-951.
- 83-1056 Transferred to section 71-952.
- 83-1057 Transferred to section 71-953.
- 83-1058 Transferred to section 71-954.
- 83-1059 Transferred to section 71-955.
- 83-1060 Transferred to section 71-956.
- 83-1061 Transferred to section 71-957.
- 83-1062 Transferred to section 71-958.
- 83-1063 Repealed. Laws 1981, LB 95, § 30.
- 83-1064 Transferred to section 71-960.
- 83-1065 Repealed. Laws 2004, LB 1083, § 149.
- 83-1066 Transferred to section 71-959.
- 83-1067 Repealed. Laws 2004, LB 1083, § 149.
- 83-1068 Transferred to section 71-961.
- 83-1069 Transferred to section 71-962.
- 83-1070 Repealed. Laws 2004, LB 1083, § 149.
- 83-1071 Transferred to section 71-939.
- 83-1072 Transferred to section 71-940.
- 83-1073 Transferred to section 71-941.
- 83-1074 Transferred to section 71-942.
- 83-1075 Repealed. Laws 1982, LB 592, § 2.
- 83-1076 Repealed. Laws 1982, LB 592, § 2.
- 83-1077 Repealed. Laws 1982, LB 592, § 2.
- 83-1077.01 Repealed. Laws 2004, LB 1083, § 149.
- 83-1078 Transferred to section 71-901.

(b) RELEASE PROVISIONS

- 83-1079 Transferred to section 71-937.
- 83-1080 Transferred to section 71-938.

**83-1081 Repealed. Laws 1992, LB 523, § 18.**

**ARTICLE 11**

**PERSONS WITH MENTAL RETARDATION**

Section

- 83-1101. Repealed. Laws 1991, LB 830, § 36.
- 83-1102. Repealed. Laws 1991, LB 830, § 36.
- 83-1103. Repealed. Laws 1991, LB 830, § 36.
- 83-1104. Repealed. Laws 1991, LB 830, § 36.
- 83-1105. Repealed. Laws 1991, LB 830, § 36.
- 83-1106. Repealed. Laws 1991, LB 830, § 36.
- 83-1107. Repealed. Laws 1991, LB 830, § 36.
- 83-1108. Repealed. Laws 1991, LB 830, § 36.
- 83-1109. Repealed. Laws 1991, LB 830, § 36.
- 83-1110. Repealed. Laws 1991, LB 830, § 36.
- 83-1111. Repealed. Laws 1991, LB 830, § 36.
- 83-1112. Repealed. Laws 1991, LB 830, § 36.
- 83-1113. Repealed. Laws 1991, LB 830, § 36.
- 83-1114. Repealed. Laws 1991, LB 830, § 36.
- 83-1115. Repealed. Laws 1991, LB 830, § 36.
- 83-1116. Repealed. Laws 1991, LB 830, § 36.
- 83-1117. Repealed. Laws 1991, LB 830, § 36.
- 83-1118. Repealed. Laws 1991, LB 830, § 36.
- 83-1119. Repealed. Laws 1991, LB 830, § 36.
- 83-1120. Repealed. Laws 1991, LB 830, § 36.
- 83-1121. Repealed. Laws 1991, LB 830, § 36.
- 83-1122. Repealed. Laws 1991, LB 830, § 36.
- 83-1123. Repealed. Laws 1991, LB 830, § 36.
- 83-1124. Repealed. Laws 1991, LB 830, § 36.
- 83-1125. Repealed. Laws 1991, LB 830, § 36.
- 83-1126. Repealed. Laws 1991, LB 830, § 36.
- 83-1127. Repealed. Laws 1991, LB 830, § 36.
- 83-1128. Repealed. Laws 1991, LB 830, § 36.
- 83-1129. Repealed. Laws 1991, LB 830, § 36.
- 83-1130. Repealed. Laws 1991, LB 830, § 36.
- 83-1131. Repealed. Laws 1991, LB 830, § 36.
- 83-1132. Repealed. Laws 1991, LB 830, § 36.
- 83-1133. Repealed. Laws 1991, LB 830, § 36.
- 83-1134. Repealed. Laws 1991, LB 830, § 36.
- 83-1135. Repealed. Laws 1991, LB 830, § 36.
- 83-1136. Repealed. Laws 1991, LB 830, § 36.
- 83-1137. Repealed. Laws 1991, LB 830, § 36.
- 83-1138. Repealed. Laws 1991, LB 830, § 36.
- 83-1139. Repealed. Laws 1991, LB 830, § 36.

**83-1101 Repealed. Laws 1991, LB 830, § 36.**

**83-1102 Repealed. Laws 1991, LB 830, § 36.**

**83-1103 Repealed. Laws 1991, LB 830, § 36.**

**83-1104 Repealed. Laws 1991, LB 830, § 36.**

**83-1105 Repealed. Laws 1991, LB 830, § 36.**

**83-1106 Repealed. Laws 1991, LB 830, § 36.**

**83-1107 Repealed. Laws 1991, LB 830, § 36.**

83-1108 Repealed. Laws 1991, LB 830, § 36.  
83-1109 Repealed. Laws 1991, LB 830, § 36.  
83-1110 Repealed. Laws 1991, LB 830, § 36.  
83-1111 Repealed. Laws 1991, LB 830, § 36.  
83-1112 Repealed. Laws 1991, LB 830, § 36.  
83-1113 Repealed. Laws 1991, LB 830, § 36.  
83-1114 Repealed. Laws 1991, LB 830, § 36.  
83-1115 Repealed. Laws 1991, LB 830, § 36.  
83-1116 Repealed. Laws 1991, LB 830, § 36.  
83-1117 Repealed. Laws 1991, LB 830, § 36.  
83-1118 Repealed. Laws 1991, LB 830, § 36.  
83-1119 Repealed. Laws 1991, LB 830, § 36.  
83-1120 Repealed. Laws 1991, LB 830, § 36.  
83-1121 Repealed. Laws 1991, LB 830, § 36.  
83-1122 Repealed. Laws 1991, LB 830, § 36.  
83-1123 Repealed. Laws 1991, LB 830, § 36.  
83-1124 Repealed. Laws 1991, LB 830, § 36.  
83-1125 Repealed. Laws 1991, LB 830, § 36.  
83-1126 Repealed. Laws 1991, LB 830, § 36.  
83-1127 Repealed. Laws 1991, LB 830, § 36.  
83-1128 Repealed. Laws 1991, LB 830, § 36.  
83-1129 Repealed. Laws 1991, LB 830, § 36.  
83-1130 Repealed. Laws 1991, LB 830, § 36.  
83-1131 Repealed. Laws 1991, LB 830, § 36.  
83-1132 Repealed. Laws 1991, LB 830, § 36.  
83-1133 Repealed. Laws 1991, LB 830, § 36.  
83-1134 Repealed. Laws 1991, LB 830, § 36.  
83-1135 Repealed. Laws 1991, LB 830, § 36.  
83-1136 Repealed. Laws 1991, LB 830, § 36.  
83-1137 Repealed. Laws 1991, LB 830, § 36.  
83-1138 Repealed. Laws 1991, LB 830, § 36.

**83-1139 Repealed. Laws 1991, LB 830, § 36.****ARTICLE 12****DEVELOPMENTAL DISABILITIES SERVICES**

Section	
83-1201.	Act, how cited.
83-1202.	Legislative intent.
83-1202.01.	Appropriations; legislative findings.
83-1202.02.	Repealed. Laws 1996, LB 1044, § 985.
83-1203.	Definitions, where found.
83-1204.	Department, defined.
83-1205.	Developmental disability, defined.
83-1206.	Director, defined.
83-1207.	Specialized program, defined.
83-1208.	Specialized service, defined.
83-1209.	Director; duties.
83-1210.	Local field offices.
83-1211.	Responsibility for cost of services.
83-1212.	Repealed. Laws 2005, LB 205, § 1.
83-1212.01.	Advisory Committee on Developmental Disabilities; created; members; expenses; duties.
83-1213.	Quality review team; members; terms; expenses; duties.
83-1214.	Repealed. Laws 2006, LB 1248, § 92.
83-1215.	Department; authority granted for specialized services; social services; duties.
83-1216.	Department; services; legislative intent.
83-1217.	Department; contract for specialized services; certification and accreditation requirements.
83-1217.01.	Employees; criminal history record information check.
83-1217.02.	Employees subject to criminal history record information check; fingerprints; confidentiality.
83-1218.	Specialized program; local governing board; duties.
83-1219.	Complaints and hearings; procedures.
83-1220.	Hearing officers; qualifications.
83-1221.	Hearing officer; powers and duties.
83-1222.	Hearing; rights of parties; hearing officer; production of evidence.
83-1223.	Hearing officer; subpoena power; enforcement.
83-1224.	Judicial review; enforcement of final decision and order; procedures; appeal to Court of Appeals.
83-1225.	School district; provide transition services; enumerated.
83-1226.	Rules and regulations.
83-1227.	Repealed. Laws 1998, LB 1354, § 48.

**83-1201 Act, how cited.**

Sections 83-1201 to 83-1226 shall be known and may be cited as the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 1; Laws 1994, LB 1136, § 1; Laws 1997, LB 852, § 1.

**83-1202 Legislative intent.**

It is the intent of the Legislature that:

(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;

(2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;

(3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;

(4) All persons with developmental disabilities shall, to the maximum extent possible, be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;

(5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities;

(6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled;

(7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees;

(8) The first priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse or neglect, and protection from harm; and

(9) The second priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons receive appropriate assessment of their needs, planning to meet their needs, information about services available to meet their needs, referral to services matched to their needs, coordination of services delivered, support sufficient to allow them to live with their natural families or independently, transportation to facilitate access to services, and meaningful habilitation, education, training, employment, and recreation designed to enhance their skills, increase their independence, and improve their quality of life.

**Source:** Laws 1991, LB 830, § 2.

#### **83-1202.01 Appropriations; legislative findings.**

The Legislature finds that present state appropriations on behalf of community-based services to persons with developmental disabilities are inadequate to pay the reasonable costs of providing such services to all Nebraskans who are eligible to receive them.

It is the intent of the Legislature that the state pursue full funding of community-based developmental disability programs in a reasonable timeframe and that the Legislature commit itself and the state to attaining the goal of providing services to all eligible persons by July 1, 2010.

**Source:** Laws 1994, LB 1136, § 2; Laws 2004, LB 297, § 1.

#### **83-1202.02 Repealed. Laws 1996, LB 1044, § 985.**

#### **83-1203 Definitions, where found.**

For purposes of the Developmental Disabilities Services Act, the definitions found in sections 83-1204 to 83-1208 shall be used.

**Source:** Laws 1991, LB 830, § 3.

#### **83-1204 Department, defined.**

Department shall mean the Division of Developmental Disabilities of the Department of Health and Human Services.

**Source:** Laws 1991, LB 830, § 4; Laws 1996, LB 1044, § 971; Laws 2007, LB296, § 807.

**83-1205 Developmental disability, defined.**

Developmental disability shall mean:

- (1) Mental retardation; or
- (2) A severe, chronic disability other than mental retardation or mental illness which:
  - (a) Is attributable to a mental or physical impairment other than a mental or physical impairment caused solely by mental illness;
  - (b) Is manifested before the age of twenty-two years;
  - (c) Is likely to continue indefinitely; and
  - (d) Results in:
    - (i) In the case of a person under three years of age, at least one developmental delay; or
    - (ii) In the case of a person three years of age or older, a substantial limitation in three or more of the following areas of major life activity, as appropriate for the person's age:
      - (A) Self-care;
      - (B) Receptive and expressive language development and use;
      - (C) Learning;
      - (D) Mobility;
      - (E) Self-direction;
      - (F) Capacity for independent living; and
      - (G) Economic self-sufficiency.

**Source:** Laws 1991, LB 830, § 5.

**83-1206 Director, defined.**

Director shall mean the Director of Developmental Disabilities of the Division of Developmental Disabilities.

**Source:** Laws 1991, LB 830, § 6; Laws 1996, LB 1044, § 972; Laws 2007, LB296, § 808.

**83-1207 Specialized program, defined.**

Specialized program shall mean an agency, organization, association, or other entity which provides specialized services.

**Source:** Laws 1991, LB 830, § 7.

**83-1208 Specialized service, defined.**

Specialized service shall mean a service provided specifically for persons with developmental disabilities.

**Source:** Laws 1991, LB 830, § 8.

**83-1209 Director; duties.**

To carry out the policies and purposes of the Developmental Disabilities Services Act, the director shall:

(1) Ensure effective management by (a) determining whether applicants are eligible for specialized services, (b) authorizing service delivery for eligible persons, (c) ensuring that services are available, accessible, and coordinated, (d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan, (e) having the amount of funding for specialized services determined by an objective assessment process as developed in subsection (3) of section 83-1216, (f) providing information and referral services to persons with developmental disabilities and their families, (g) promoting the development of pilot projects of high quality, cost-efficient services provided by specialized programs, and (h) administering the Beatrice State Developmental Center;

(2) Ensure a coordinated statewide response by (a) developing a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with state and local officials, designated advocates for such persons, service providers, and the general public, (b) reporting biennially to the Legislature, the Governor, service providers, and the public on persons served and progress made toward meeting requirements of the plan, and (c) creating a statewide registry of persons eligible for specialized services;

(3) Ensure specialized services which are efficient and individualized by (a) developing a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls and (b) administering all state and federal funds as may be allowed by law used by specialized programs in the state;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development of review teams designed to enhance the quality of specialized services, (c) developing certification and accreditation requirements for service providers, (d) providing technical assistance to local service providers, and (e) providing eligible persons, their families, and the designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with copies of all reports resulting from surveys of providers of specialized services conducted as part of the certification and accreditation process; and

(5) Establish and staff a developmental disabilities division which shall assist in carrying out the policies and purposes of the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 9; Laws 2004, LB 297, § 2.

**83-1210 Local field offices.**

The department may establish local field offices to assist in discharging departmental responsibilities and to ensure accessibility of departmental ser-

VICES for persons with developmental disabilities and their families throughout the state.

**Source:** Laws 1991, LB 830, § 10.

**83-1211 Responsibility for cost of services.**

A person receiving specialized services from a local specialized program which receives financial assistance through the department shall be responsible for the cost of such services in the same manner as are persons receiving care at the Beatrice State Developmental Center. Provisions of law in effect on September 6, 1991, or enacted after such date relating to the responsibility of such persons and their relatives for the cost of and determination of ability to pay for services at the center shall also apply to persons receiving services from specialized programs.

**Source:** Laws 1991, LB 830, § 11.

**83-1212 Repealed. Laws 2005, LB 205, § 1.**

**83-1212.01 Advisory Committee on Developmental Disabilities; created; members; expenses; duties.**

(1) There is hereby created the Advisory Committee on Developmental Disabilities. The advisory committee shall consist of a representative of a statewide advocacy organization for persons with developmental disabilities and their families and not more than fifteen additional members, at least one-third of whom shall be persons with developmental disabilities, at least one-third of whom shall be families of persons with developmental disabilities, and no more than one-third of whom shall be elected officials or interested community persons.

(2) The members shall be appointed by the Governor for staggered terms of three years. Any vacancy shall be filled by the Governor for the remainder of the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The advisory committee shall advise the department regarding all aspects of the funding and delivery of services to persons with developmental disabilities.

(4) The advisory committee shall provide sufficient oversight to ensure that persons placed in the custody of the department under the Developmental Disabilities Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary.

**Source:** Laws 1994, LB 1136, § 4; Laws 2005, LB 206, § 35.

**Cross References**

Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.

**83-1213 Quality review team; members; terms; expenses; duties.**

(1) The department shall establish a quality review team for each developmental disability region. Each team shall consist of four members appointed by the director and shall include at least one person with a developmental disability, at least one parent or other close relative of a person with a developmental disability, and at least one person who is neither a person with a

developmental disability nor a close relative of such a person. No employee of any governmental agency or instrumentality or any specialized program shall be eligible to be appointed to a team. Members shall be chosen from nominations submitted by advocacy groups, providers, elected officials, or other groups or by persons interested in developmental disability services who are located in the service area of the developmental disability region.

(2) For each quality review team, one member shall be appointed for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years with the director designating the expiration of the initial term of office of each member. Thereafter, successors shall serve for terms of four years. In case of a vacancy, a successor shall be appointed for the unexpired term. Members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(3) Each quality review team shall (a) conduct an annual quality-of-life survey of persons with developmental disabilities receiving services in a developmental disability region and of their families, guardians, and designated advocates, (b) receive, investigate, and hear complaints from persons with developmental disabilities and their families, guardians, and designated advocates, and (c) make recommendations to the developmental disability region.

**Source:** Laws 1991, LB 830, § 13.

**83-1214 Repealed. Laws 2006, LB 1248, § 92.**

**83-1215 Department; authority granted for specialized services; social services; duties.**

The department shall carry out the authority granted to it pursuant to section 68-1204 and shall comply with all applicable provisions of the federal act identified in such section and of sections 68-1202 to 68-1210.

**Source:** Laws 1991, LB 830, § 15; Laws 1996, LB 1044, § 974.

**83-1216 Department; services; legislative intent.**

(1) Beginning July 1, 1995, persons determined to be eligible for specialized services who on or after September 6, 1993, graduate from high school, reach the age of twenty-one years, or are currently receiving services shall receive services in accordance with the Developmental Disabilities Services Act. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the plan in subsection (3) of this section.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services.

(3) It is the intent of the Legislature that by July 1, 2010, all persons determined to be eligible for services shall receive services in accordance with the act.

(4) It is the intent of the Legislature that the department take all possible steps to maximize funding in order to implement subsections (1) and (2) of this section prior to the date these subsections become entitlements. All Nebraska residents eligible for funding for specialized services under the Developmental Disabilities Services Act shall apply for and accept any federal medicaid

benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.

**Source:** Laws 1991, LB 830, § 16; Laws 1992, Third Spec. Sess., LB 4, § 1; Laws 1994, LB 1136, § 5; Laws 1996, LB 1044, § 975; Laws 2004, LB 297, § 3; Laws 2007, LB296, § 809.

**83-1217 Department; contract for specialized services; certification and accreditation requirements.**

The department shall contract for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements. In order to be certified, each program shall:

- (1) Have an internal quality assurance process;
- (2) Have a program evaluation component;
- (3) Have a complaint mechanism for persons with developmental disabilities and their families;
- (4) Have a process to ensure direct and open communication with the department;
- (5) Develop, implement, and regularly evaluate a plan to ensure retention of quality employees and prevent staff turnover;
- (6) Have measures to enhance staff training and development;
- (7) Be governed by a local governing board or have an advisory committee, the membership of which consists of (a) county commissioners or other locally elected officials, (b) persons with developmental disabilities or members of their families, and (c) persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities. At least one-third of the membership shall be persons with developmental disabilities or members of their families. No more than one-third of the membership shall be elected officials, and no more than one-third of the membership shall be persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities;
- (8) Meet accreditation standards developed by the department;
- (9) Require a criminal history record information check of all employees hired on or after September 13, 1997, who work directly with clients receiving services and who are not licensed or certified as members of their profession; and
- (10) Meet any other certification requirements developed by the department to further the purposes of the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 17; Laws 1997, LB 852, § 2; Laws 2004, LB 297, § 4.

**83-1217.01 Employees; criminal history record information check.**

Employees of state-operated services and facilities providing developmental disabilities services shall be subject to the criminal history record information

check requirements of subdivision (9) of section 83-1217 and section 83-1217.02.

**Source:** Laws 1997, LB 852, § 3.

**83-1217.02 Employees subject to criminal history record information check; fingerprints; confidentiality.**

Each employee subject to the criminal history record information check requirements of subdivision (9) of section 83-1217 and section 83-1217.01 shall file a complete set of his or her legible fingerprints with the department. The department shall transmit such fingerprints to the Nebraska State Patrol which shall transmit a copy of the applicant's fingerprints to the Identification Division of the Federal Bureau of Investigation for a national criminal history record information check.

The national criminal history record information check shall include information concerning the employee from federal repositories of such information and repositories of such information in other states if authorized by federal law. The division shall issue a report containing the results of the national criminal history record information check to the department.

The Nebraska State Patrol shall undertake a search for Nebraska criminal history record information concerning the employee. The Nebraska State Patrol shall issue a report to the department which contains the results of the criminal history record information check conducted by the Nebraska State Patrol.

The department shall issue copies of the reports to the employee and to the employer listed by the employee.

Criminal history record information subject to federal confidentiality requirements shall remain confidential and may be released only upon the written authorization by the employee.

The department, in cooperation with the Nebraska State Patrol, shall adopt and promulgate rules and regulations to carry out this section. Such rules and regulations shall provide that the decision to initiate, continue, or terminate the employment of the employee is and shall remain that of the employer.

**Source:** Laws 1997, LB 852, § 4; Laws 1999, LB 722, § 1.

**83-1218 Specialized program; local governing board; duties.**

The local governing board for a specialized program shall:

- (1) Organize and supervise the delivery of specialized services within its governance;
- (2) Cause such services to be provided;
- (3) Report annually to the director regarding the expenditure of funds and the evaluation of specialized services rendered during the preceding year; and
- (4) Ensure compliance with the certification and accreditation requirements of section 83-1217 and all applicable rules and regulations of the department.

**Source:** Laws 1991, LB 830, § 18.

**83-1219 Complaints and hearings; procedures.**

A person with developmental disabilities or his or her parent or guardian may initiate a hearing on matters related to the initiation, change, or termination of or the refusal to initiate, change, or terminate the determination of

eligibility for specialized services or the evaluation or placement of the person or the provision of specialized services or records relating thereto. A copy of the procedures specified in rules and regulations of the department for complaints and hearings under this section shall be provided to such persons who are receiving specialized services or their parents or guardians. The hearing shall be initiated by filing a petition with the department.

**Source:** Laws 1991, LB 830, § 19; Laws 2004, LB 297, § 5.

**83-1220 Hearing officers; qualifications.**

The department shall conduct hearings initiated under section 83-1219 using hearing officers. The department may employ, retain, or approve such qualified hearing officers as are necessary to conduct the hearings. The hearing officers shall not be persons who are employees or officers of a local agency which is involved in providing services to the person with developmental disabilities. A person who otherwise qualifies to conduct a hearing shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest. Hearing officers appointed and assigned by the department shall have exclusive original jurisdiction over cases arising under sections 83-1219 to 83-1224, and in no event shall juvenile courts have jurisdiction over such matters.

**Source:** Laws 1991, LB 830, § 20.

**83-1221 Hearing officer; powers and duties.**

Upon the receipt of a petition pursuant to section 83-1219, the department shall assign it to a hearing officer. The hearing officer shall receive all subsequent pleadings and shall conduct the hearing. At the hearing the parties shall present evidence on the issues raised in the pleadings. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing findings of fact and conclusions of law. Within forty-five days after the receipt of a request for a hearing, the hearing officer shall prepare a final decision and order directing such action as may be necessary. At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond this period. The report and the final decision and order shall be delivered to each party or attorney of record by certified mail and to the director.

**Source:** Laws 1991, LB 830, § 21.

**83-1222 Hearing; rights of parties; hearing officer; production of evidence.**

Any party at a hearing conducted pursuant to section 83-1219 shall have the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the needs of persons with developmental disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;
- (4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

The hearing officer may also produce evidence on his or her own motion.

**Source:** Laws 1991, LB 830, § 22.

**83-1223 Hearing officer; subpoena power; enforcement.**

The hearing officer shall have the power by subpoena to compel the appearance of witnesses and the production of any relevant evidence. Any witness compelled to attend or produce evidence shall be entitled to the fees and expenses allowed in district court. Any failure to respond to such subpoena shall be certified by the hearing officer to the district court of Lancaster County for enforcement or for punishment for contempt of the district court.

**Source:** Laws 1991, LB 830, § 23.

**83-1224 Judicial review; enforcement of final decision and order; procedures; appeal to Court of Appeals.**

(1) Any party aggrieved by the findings, conclusions, or final decision and order of the hearing officer shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the hearing officer pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review to such district court shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending in district court and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice to the rights of any party.

(4) Within thirty days after receiving notification that a petition for judicial review has been filed or, if good cause is shown, within such further time as the court may allow, the department shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer.

(5) Judicial review shall be heard de novo on the record. The court shall receive the records of the administrative proceedings, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate. The district court may affirm, reverse, or modify the decision of the hearing officer, or remand the case to the hearing officer for further proceedings, including the receipt of additional evidence, for good cause shown.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the

hearing officer's final decision and order shall become effective. Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of Lancaster County within one year after the date of the hearing officer's final decision and order.

**Source:** Laws 1991, LB 830, § 24; Laws 1992, LB 360, § 39; Laws 2004, LB 297, § 6.

**83-1225 School district; provide transition services; enumerated.**

Each school district shall provide transition services for each student with a developmental disability no later than when the student reaches sixteen years of age and until the student graduates from a special education program or is no longer eligible to receive services pursuant to section 79-1126. Transition services shall consist of a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other postschool adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. The transition team shall designate one or more specialized service providers to develop a plan for the student's transition to adult specialized services.

**Source:** Laws 1991, LB 830, § 25; Laws 1996, LB 900, § 1068.

**83-1226 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 26.

**83-1227 Repealed. Laws 1998, LB 1354, § 48.**

## STATE OFFICERS

# CHAPTER 84 STATE OFFICERS

### Article.

1. Governor. 84-101 to 84-168.
2. Attorney General. 84-201 to 84-221.
3. Auditor of Public Accounts. 84-301 to 84-322.
4. Board of Educational Lands and Funds. 84-401 to 84-415.
5. Secretary of State. 84-501 to 84-510.
6. State Treasurer. 84-601 to 84-620.
7. General Provisions as to State Officers. 84-701 to 84-733.
8. Deputies. 84-801 to 84-811.
9. Rules of Administrative Agencies.
  - (a) Administrative Procedure Act. 84-901 to 84-920.
  - (b) Negotiated Rulemaking Act. 84-921 to 84-932.
10. Basic Workweek. 84-1001 to 84-1005.
11. General Emergency Succession Act. 84-1101 to 84-1117.
12. Public Records.
  - (a) Records Management Act. 84-1201 to 84-1227.
  - (b) Electronic Records. 84-1228.
13. State Employees Retirement Act. 84-1301 to 84-1333.
14. Public Meetings. 84-1401 to 84-1414.
15. Public Employees Retirement Board. 84-1501 to 84-1514.
16. Nebraska State Insurance Program. 84-1601 to 84-1617.

### Cross References

#### Constitutional provisions:

- Bonds, official, see Article IV, section 26, Constitution of Nebraska.
- Colleges, State, see Article VII, section 13, Constitution of Nebraska.
- Compensation, no extra during term, see Article III, section 19, Constitution of Nebraska.
- Coordinating Commission for Postsecondary Education, see Article VII, section 14, Constitution of Nebraska.
- Distribution of powers, three branches, see Article II, section 1, Constitution of Nebraska.
- Education, State Board of, see Article VII, section 3, Constitution of Nebraska.
- Educational Lands and Funds, Board of, see Article VII, section 6, Constitution of Nebraska.
- Election of executive officers, term, eligibility, see Article IV, sections 1, 2, and 3, Constitution of Nebraska.
- Heads of departments, elective officers made, how, see Article IV, section 1, Constitution of Nebraska.
- Impeachment:
  - General provision, see Article IV, section 5, Constitution of Nebraska.
  - Procedure, see Article III, section 17, Constitution of Nebraska.
- Industrial Relations, Commission of, see Article XV, section 9, Constitution of Nebraska.
- Judicial nominating commission, see Article V, section 21, Constitution of Nebraska.
- Judicial Qualifications, Commission on, see Article V, section 28, Constitution of Nebraska.
- Oath, see Article XV, section 1, Constitution of Nebraska.
- Parole and pardons, see Article IV, section 13, Constitution of Nebraska.
- Public Service Commission, see Article IV, section 20, Constitution of Nebraska.
- Reports of state officers, see Article IV, section 23, Constitution of Nebraska.
- Returns of election, canvass of, see Article IV, section 4, Constitution of Nebraska.
- Salaries and fees, see Article IV, section 25, Constitution of Nebraska.
- Tax Commissioner, see Article IV, section 28, Constitution of Nebraska.
- Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.
- University of Nebraska, Board of Regents, see Article VII, section 10, Constitution of Nebraska.
- Vacancies, see Article IV, sections 11 and 12, Constitution of Nebraska.

#### Absent on military duty, provisions, when, see section 32-561.

#### Boards, state:

- Abstracters Board of Examiners, see section 76-540.
- Beginning Farmer Board, see section 77-5204.
- Board (Nebraska Redevelopment Act), see section 58-503.
- Board of Advanced Practice Registered Nurses, see section 38-167.
- Board of Alcohol and Drug Counseling, see section 38-167.
- Board of Athletic Training, see section 38-167.
- Board of Audiology and Speech-Language Pathology, see section 38-167.
- Board of Barber Examiners, see section 71-221.
- Board of Chiropractic, see section 38-167.
- Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art, see section 38-167.

## STATE OFFICERS

- Board of Dentistry, see section 38-167.
  - Board of Educational Lands and Funds, see section 72-201.
  - Board of Emergency Medical Services, see section 38-167.
  - Board of Engineers and Architects, see section 81-3428.
  - Board of Examiners for County Highway and City Street Superintendents, see section 39-2301.
  - Board of Funeral Directing and Embalming, see section 38-167.
  - Board of Geologists, see section 81-3520.
  - Board of Hearing Aid Instrument Dispensers and Fitters, see section 38-167.
  - Board of Massage Therapy, see section 38-167.
  - Board of Medical Nutrition Therapy, see section 38-167.
  - Board of Medical Radiography, see section 38-167.
  - Board of Medicine and Surgery, see section 38-167.
  - Board of Mental Health Practice, see section 38-167.
  - Board of Nursing, see section 38-167.
  - Board of Nursing Home Administration, see section 38-167.
  - Board of Occupational Therapy Practice, see section 38-167.
  - Board of Optometry, see section 38-167.
  - Board of Pardons, see section 83-1,126.
  - Board of Parole, see section 83-188.
  - Board of Pharmacy, see section 38-167.
  - Board of Physical Therapy, see section 38-167.
  - Board of Podiatry, see section 38-167.
  - Board of Psychology, see section 38-167.
  - Board of Public Roads Classifications and Standards, see section 39-2106.
  - Board of Regents of the University of Nebraska, see sections 85-103 and 85-103.01.
  - Board of Registered Environmental Health Specialists, see section 38-167.
  - Board of Respiratory Care Practice, see section 38-167.
  - Board of state canvassers, see section 32-1037.
  - Board of Trustees of the Nebraska State Colleges, see section 85-301.
  - Board of Veterinary Medicine and Surgery, see section 38-167.
  - Boiler Safety Code Advisory Board, see section 48-739.
  - Collection Agency Licensing Board, see section 45-603.
  - Community College Board of Governors, see section 85-1506.
  - Corn Development, Utilization, and Marketing Board, see sections 2-3604 and 2-3611.
  - County Drug Law Enforcement and Education Fund Board, see section 28-1439.03.
  - Executive Board of the Legislative Council, see section 50-401.01.
  - Fort Preservation, Restoration and Development Boards, see section 72-407.
  - Grain Sorghum Development, Utilization, and Marketing Board, see sections 2-4002 and 2-4004.
  - Health Advisory Board, see section 60-4,118.02.
  - Jail Standards Board, see section 83-4,124.
  - Livestock Auction Market Board, see section 54-1160.
  - Nebraska Aquaculture Board, see section 2-5003.
  - Nebraska Child Abuse Prevention Fund Board, see section 43-1903.
  - Nebraska Dairy Industry Development Board, see section 2-3951.
  - Nebraska Economic Forecasting Advisory Board, see section 77-27,156.
  - Nebraska Environmental Trust Board, see section 81-15,170.
  - Nebraska Ethanol Board, see section 66-1335.
  - Nebraska Fire Safety Appeals Board, see section 81-502.01.
  - Nebraska Motor Vehicle Industry Licensing Board, see section 60-1402.
  - Nebraska Power Review Board, see section 70-1003.
  - Nebraska State Board of Public Accountancy, see section 1-107.
  - Nebraska State Fair Board, see section 2-101.
  - Nebraska Wheat Development, Utilization, and Marketing Board, see section 2-2302.
  - Nebraska Worker Training Board, see section 48-622.03.
  - Personnel policy board, see section 23-2537.
  - Public Employees Retirement Board, see section 84-1501.
  - Real Property Appraiser Board, see section 76-2222.
  - Regional trauma advisory board, see section 71-8251.
  - State Anatomical Board, see section 71-1001.
  - State Board of Education, see section 79-301.
  - State Board of Examiners for Land Surveyors, see section 81-8,109 et seq.
  - State Board of Health, see section 71-2601.
  - State Board of Landscape Architects, see section 81-8,186.
  - State Board of Vocational Education, see sections 79-321 and 79-740.
  - State Claims Board, see section 81-8,220.
  - State Electrical Board, see section 81-2103.
  - State Foster Care Review Board, see section 43-1302.
  - State Personnel Board, see section 81-1318.
  - State Records Board, see section 84-1204.
  - State Trauma Advisory Board, see section 71-8236.
  - Suggestion Award Board, see section 81-1348.
  - Veterans' Homes Board, see section 80-318.
  - Water Well Standards and Contractors' Licensing Board, see sections 38-167 and 46-1217.
- Bonds and oaths**, official, see Chapter 11.
- Commissions, state:**
- Central Interstate Low-Level Radioactive Waste Compact Commission, see section 81-1599.02.
  - Civil Service Commission, see section 23-2503.

## STATE OFFICERS

Commission for the Deaf and Hard of Hearing, see section 71-4720.  
Commission of Industrial Relations, see section 48-803.  
Commission on Indian Affairs, see section 81-2501.  
Commission on Judicial Qualifications, see section 24-715.  
Commission on Mexican-Americans, see section 81-8,262.  
Commission on Public Advocacy, see section 29-3923.  
Commission on the status of women (primary-class city), see section 15-277.  
Commission on Uniform State Laws, see section 49-901.  
Coordinating Commission for Postsecondary Education, see section 85-1403.  
Dry Bean Commission, see section 2-3745.  
Economic Development Commission, see section 81-1201.02.  
Education Commission of the States, see section 79-1503.  
Equal Opportunity Commission, see section 48-1116.  
Game and Parks Commission, see section 37-101.  
Governor's Residence Advisory Commission, see section 72-2101.  
Interstate Oil Compact Commission, see Appendix 1-108.  
Judicial nominating commission, see section 24-801.  
Judicial Resources Commission, see section 24-1201.  
Land Reutilization Commission (county), see section 77-3203.  
Midwestern Higher Education Commission, see section 85-1301.  
Nebraska Accountability and Disclosure Commission, see section 49-14,105.  
Nebraska Aeronautics Commission, see section 3-104.  
Nebraska Boundary Commission, see Appendix 1-120.  
Nebraska Capitol Commission, see section 81-1108.32.  
Nebraska Commission on Law Enforcement and Criminal Justice, see section 81-1416.  
Nebraska Commission on the Status of Women, see section 81-8,255.  
Nebraska Educational Telecommunications Commission, see section 79-1313.  
Nebraska Hall of Fame Commission, see section 72-724.  
Nebraska Information Technology Commission, see section 86-515.  
Nebraska-Kansas Water Compact Commission, see Appendix 1-111.  
Nebraska Library Commission, see section 51-401.  
Nebraska Liquor Control Commission, see section 53-105.  
Nebraska Natural Resources Commission, see section 2-1504.  
Nebraska Oil and Gas Conservation Commission, see section 57-904.  
Nebraska Rural Health Advisory Commission, see section 71-5654.  
Nebraska State Capitol Environs Commission, see section 90-307.  
Professional Practices Commission, see section 79-861.  
Public building commission, see section 13-1303.  
Rural Development Commission, see section 81-3601.  
State Emergency Response Commission, see section 81-15,210.  
State Highway Commission, see section 39-1101.  
State Racing Commission, see section 2-1201.  
State Real Estate Commission, see section 81-885.07.  
Tax Equalization and Review Commission, see section 77-5003.  
Veterans' Advisory Commission, see section 80-401.06.

**Committees, state:**

Advisory committee (Board of Public Accountancy), see section 1-113.  
Advisory committee (for each affiliated high school district), see section 79-4,103.  
Advisory committee (Nebraska Ethanol Board), see section 66-1337.  
Advisory committee (private postsecondary career schools), see section 85-1655.  
Advisory Committee on Developmental Disabilities, see section 83-1212.01.  
Affirmative Action Committee, see section 81-1363.  
Athletic Advisory Committee, see section 81-8,139.01.  
Biopower Steering Committee, see section 66-1701.  
Breast and Cervical Cancer Advisory Committee, see section 71-7012.  
Citizens advisory review committee, see section 18-2715.  
Climate Assessment Response Committee, see section 2-4901.  
Committee on Americanism, see section 79-724.  
Committee on Building Maintenance, see section 81-185.  
Community Development Block Grant Program Advisory Committee, see section 81-1201.08.  
Crime Victim's Reparations Committee, see section 81-1802.  
Division of Medicaid and Long-Term Care Advisory Committee on Aging, see section 68-1101.  
Emergency planning committee (local), see section 81-15,215.  
Geographic Information System Steering Committee, see section 86-570.  
Governor's Committee on Intergovernmental Cooperation, see section 81-817.  
Governor's Keep Nebraska Beautiful Committee, see section 81-1504.  
Health Benefit Plan Committee, see section 44-5262.  
Housing advisory committee (Department of Economic Development), see section 81-1281.  
Housing advisory committee (part of the Nebraska Affordable Housing Act), see section 58-704.  
Interagency Management Committee, see section 71-7106.  
Joint advisory committee, see section 85-954.  
Legislative Committee on Intergovernmental Cooperation, see section 81-816.  
Legislative Performance Audit Committee, see section 50-1204.  
Nebraska Brand Committee, see section 54-191.  
Nebraska Community College Aid, Grant, and Contract Review Committee, see section 85-1539.  
Nebraska Potato Development Committee, see section 2-1803.  
Nebraska Poultry and Egg Development, Utilization, and Marketing Committee, see section 2-3404.

## STATE OFFICERS

- Nebraska Retirement Systems Committee, see section 50-416.01.
- Negotiated rulemaking committee, see section 84-924.
- Physician Assistant Committee, see section 38-2056.
- Private Onsite Wastewater Treatment System Advisory Committee, see section 81-15,245.
- Public Health Clinic Formulary Advisory Committee, see section 38-2889.
- Special advisory committee (for the Commission for the Deaf and Hard of Hearing), see section 71-4728.03.
- Special committee (for the Commission for the Deaf and Heard of Hearing), see section 86-315.
- State Advisory Committee on Mental Health Services, see section 71-814.
- State Advisory Committee on Problem Gambling and Addiction Services, see section 71-816.
- State Advisory Committee on Substance Abuse Services, see section 71-815.
- State Committee for the Reorganization of School Districts, see section 79-435.
- State Comprehensive Capital Facilities Planning Committee, see section 81-1108.41.
- State noxious weed advisory committee, see section 2-945.02.
- Technical advisory committee (Department of Environmental Quality), see section 81-15,189.
- Technical advisory committee (to the State Records Board), see section 84-1205.01.
- Travel and Tourism Division Advisory Committee, see section 81-1201.13.
- Vacant Building and Excess Land Committee, see section 72-812.
- Convict disqualified from holding office**, see sections 29-112 and 29-113.
- Departments**, executive, heads of, see sections 81-102 and 81-103.
- Election and term**, state officers, see sections 32-506 to 32-509.
- Fees**, in general, see section 25-1280 and Chapter 33.
- Impeachment of state officers**, see Chapter 24, article 1.
- Insuring of state employees for negligence in operation of motor vehicles**, see section 81-8,239.07.
- Purchase of surplus property from federal government authorized**, see sections 81-907 to 81-909.
- Resignation**, how made, see section 32-562.
- Seat of government**, state capital, see section 72-701.
- Tax Commissioner**, see Chapter 77, article 3.
- Vacancies**:
  - How filled, see section 32-567.
  - Possession of office during, see section 32-563.

## ARTICLE 1 GOVERNOR

### Cross References

#### Constitutional provisions:

- Appointments by Governor:
  - Board of Educational Lands and Funds, see Article VII, section 6, Constitution of Nebraska.
  - Executive department heads, see Article IV, section 1, Constitution of Nebraska.
  - Judicial Qualifications, Commission on, citizen members, see Article V, section 28, Constitution of Nebraska.
  - Postsecondary Education, Coordinating Commission for, see Article VII, section 14, Constitution of Nebraska.
  - State colleges, see Article VII, section 13, Constitution of Nebraska.
  - State officers, in general, see Article IV, section 10, Constitution of Nebraska.
  - Tax Commissioner, see Article IV, section 28, Constitution of Nebraska.
  - Tax Equalization and Review Commission, see Article IV, section 28, Constitution of Nebraska.
  - Vacancies, elected state officers, see Article IV, section 11, Constitution of Nebraska.
  - Vacancies, judicial, appointments to fill, see Article V, section 21, Constitution of Nebraska.
  - Vacancies, nonelective state officers, see Article IV, section 12, Constitution of Nebraska.
- Budget, duty to submit, see Article IV, section 7, Constitution of Nebraska.
- Election, term, eligibility, see Article IV, sections 1 and 2, Constitution of Nebraska.
- Executive power, supreme, vested in, see Article IV, section 6, Constitution of Nebraska.
- Lieutenant Governor:
  - Becomes Governor, when, see Article IV, section 16, Constitution of Nebraska.
  - Presiding officer of Legislature, see Article III, section 10, Constitution of Nebraska.
- Message to Legislature, see Article IV, section 7, Constitution of Nebraska.
- Parole and pardons, see Article IV, section 13, Constitution of Nebraska.
- Removal of appointive officers, see Article IV, section 10, Constitution of Nebraska.
- Reports to Governor by:
  - State agencies, see Article IV, sections 22 and 23, Constitution of Nebraska.
  - Supreme Court Judges, as to laws, see Article IV, section 23, Constitution of Nebraska.
- Salary, see Article IV, section 25, Constitution of Nebraska.
- Special session, may call Legislature in, see Article IV, section 8, Constitution of Nebraska.
- Succession to governorship, see Article IV, section 16, Constitution of Nebraska.
- Term begins when, see Article XVII, section 5, Constitution of Nebraska.
- Veto power:
  - In general, see Article IV, section 15, Constitution of Nebraska.
  - Initiated or referred law, may not veto, see Article III, section 4, Constitution of Nebraska.
- Budget**, state expenditures, see sections 81-125 to 81-138.
- Campaign Finance Limitation Act**, see section 32-1601.
- Canvassers, board of state**, member, see section 32-1037.
- Civil administration**, vested in Governor, see sections 81-101 to 81-103.
- Constitutional amendments**, proclamation, see section 49-205.
- Depositories for state funds**, bond approval, see section 77-2303.
- Expenses**, see sections 81-1174 to 81-1177.
- Foreign offenders**, transfer, powers, see section 83-956.

## GOVERNOR

**Impeachment**, see section 24-101.

**Militia**, commander-in-chief, see section 55-115.

**Mineral and oil discoveries**, state aid to, see section 57-101.

**Parking authorities**, metropolitan cities, establish, see section 14-1704.

**Workweek of state employees**, duties relating to, see Chapter 84, article 10.

### Section

- 84-101. State property; Governor the legal custodian.
- 84-101.01. Governor; salary.
- 84-102. Executive officers; duty to report to Governor.
- 84-103. Civil officers; commissions; issuance by Governor.
- 84-104. Thanksgiving Day; proclamation by Governor.
- 84-104.01. Veterans Day; proclamation by Governor; prohibition of transaction of business by state departments; manner of observance.
- 84-104.02. Martin Luther King, Jr. Day; manner of observance.
- 84-104.03. Martin Luther King, Jr. Day; proclamation by Governor; commemoration.
- 84-104.04. George W. Norris Day; manner of observance.
- 84-104.05. George W. Norris Day; proclamation by Governor; commemoration.
- 84-104.06. American Indian Day; legislative findings.
- 84-104.07. American Indian Day; manner of observance.
- 84-104.08. American Indian Day; proclamation by Governor; commemoration.
- 84-104.09. Workers Memorial Day; proclamation by Governor; commemoration.
- 84-105. Repealed. Laws 1953, c. 353, § 1.
- 84-106. Superintendent of Law Enforcement and Public Safety; deputies; appointment by Governor; bond or insurance; powers; actions against, where brought.
- 84-107. State Day; observance; commemoration; proclamation.
- 84-108. Pulaski's Memorial Day; proclamation; observance.
- 84-108.01. Observances; not paid holidays.
- 84-109. State projects; control and supervision by Governor; when authorized; delegation of powers.
- 84-110. Repealed. Laws 1973, LB 494, § 34.
- 84-111. Repealed. Laws 1973, LB 494, § 34.
- 84-111.01. Repealed. Laws 1973, LB 494, § 34.
- 84-112. Repealed. Laws 1973, LB 494, § 34.
- 84-113. Repealed. Laws 1973, LB 494, § 34.
- 84-114. Repealed. Laws 1973, LB 494, § 34.
- 84-115. Repealed. Laws 1973, LB 494, § 34.
- 84-116. Repealed. Laws 1973, LB 494, § 34.
- 84-117. Repealed. Laws 1973, LB 494, § 34.
- 84-118. Repealed. Laws 1973, LB 494, § 34.
- 84-119. Repealed. Laws 1973, LB 494, § 34.
- 84-119.01. Repealed. Laws 1971, LB 226, § 5.
- 84-119.02. Repealed. Laws 1971, LB 226, § 5.
- 84-119.03. Repealed. Laws 1971, LB 226, § 5.
- 84-119.04. Repealed. Laws 1971, LB 226, § 5.
- 84-119.05. Repealed. Laws 1971, LB 226, § 5.
- 84-120. Governor; succession to office.
- 84-121. Governor; succession to office; resignation required.
- 84-122. Governor; succession to office; oath of office; effect.
- 84-123. Repealed. Laws 1963, c. 406, § 21.
- 84-124. Repealed. Laws 1963, c. 406, § 21.
- 84-125. Repealed. Laws 1963, c. 406, § 21.
- 84-126. Repealed. Laws 1963, c. 406, § 21.
- 84-127. Governor; disability; examination; conference; members; findings; effect.
- 84-128. Governor; disability; removal; examination; conference; members; findings; effect.
- 84-129. Governor; disability; conference; member; unable to perform duty; successor.
- 84-130. Governor; disability; findings; appeal; procedure; validity of acts of successor to office of Governor.
- 84-131. Comprehensive state and regional planning; declaration of purpose.

- Section  
84-132. Sections; purpose.  
84-133. Governor's Policy Research Office; created; members; Director of Policy Research; appointment; duties; Governor's Policy Research Office Revolving Fund; created; use; investment.  
84-134. Advisory committees or councils; members; appointment; no compensation; expenses; meetings.  
84-135. Governor's Policy Research Office; principal state office to coordinate policy development; duties; Governor's Policy Research Cash Fund; created; use; investment.  
84-135.01. Repealed. Laws 1979, LB 412, § 32.  
84-136. Governor's Policy Research Office; state development policy alternatives; powers.  
84-137. Governor's Policy Research Office; functional plans; Governor; powers.  
84-138. Repealed. Laws 1979, LB 412, § 32.  
84-139. Plans of state agencies; approval by Governor's Policy Research Office.  
84-140. Repealed. Laws 1988, LB 811, § 1.  
84-140.01. Repealed. Laws 1995, LB 14, § 1.  
84-141. Nebraska Commission on Law Enforcement and Criminal Justice; planning programs; consistent with planning policies of Governor's Policy Research Office.  
84-142. Repealed. Laws 1992, LB 573, § 16.  
84-143. Repealed. Laws 1992, LB 573, § 16.  
84-144. Repealed. Laws 1992, LB 573, § 16.  
84-145. Repealed. Laws 1992, LB 573, § 16.  
84-146. Repealed. Laws 1992, LB 573, § 16.  
84-147. Repealed. Laws 1992, LB 573, § 16.  
84-148. Repealed. Laws 1992, LB 573, § 16.  
84-149. Repealed. Laws 1992, LB 573, § 16.  
84-150. Repealed. Laws 1992, LB 573, § 16.  
84-151. Repealed. Laws 1985, LB 421, § 6.  
84-152. Transferred to section 13-301.  
84-153. Transferred to section 13-302.  
84-154. Repealed. Laws 1985, LB 421, § 6.  
84-155. Transferred to section 19-912.01.  
84-156. Repealed. Laws 1985, LB 421, § 6.  
84-157. Repealed. Laws 1985, LB 421, § 6.  
84-158. Repealed. Laws 1985, LB 421, § 6.  
84-159. Repealed. Laws 1985, LB 421, § 6.  
84-160. Repealed. Laws 1985, LB 421, § 6.  
84-161. Comprehensive development plans; Governor's Policy Research Office; assist in preparation; when.  
84-162. Vital resource emergencies; legislative findings.  
84-163. Terms, defined.  
84-164. Vital resource emergency; Governor declare; when; termination.  
84-165. Vital resource emergency; legislative determination; response of Governor.  
84-166. Vital resource emergency; Governor; powers.  
84-167. Emergency measures; exemption; issued by Governor.  
84-168. Acceptance of cession or retrocession of federal jurisdiction; filing.

#### **84-101 State property; Governor the legal custodian.**

The Governor is constituted the legal custodian of all the property of the state not specially entrusted to other officers by law; and he is authorized and empowered to take summary possession of such property of the state, without any process of law, and to adopt such measures as he may deem proper to preserve it from injury or deterioration.

**Source:** Laws 1867, § 1, p. 100; R.S.1913, § 5531; C.S.1922, § 4827; C.S.1929, § 84-101.

**84-101.01 Governor; salary.**

Until January 4, 2007, the annual salary of the Governor shall be eighty-five thousand dollars. Commencing January 4, 2007, the annual salary of the Governor shall be one hundred five thousand dollars. Such salary shall be payable in equal monthly installments.

**Source:** Laws 1986, LB 43, § 2; Laws 1990, LB 503, § 2; Laws 2000, LB 956, § 2; Laws 2006, LB 817, § 2.

**84-102 Executive officers; duty to report to Governor.**

It shall be the duty of the several officers of the executive department to make a written report to the Governor of the public business entrusted to their charge, whenever required by him so to do.

**Source:** Laws 1867, § 2, p. 101; R.S.1913, § 5532; C.S.1922, § 4828; C.S.1929, § 84-103.

**84-103 Civil officers; commissions; issuance by Governor.**

All commissions to civil officers in this state shall be issued and signed by the Governor, and countersigned by the Secretary of State, and a record thereof kept in the office of the Secretary of State.

**Source:** Laws 1867, § 3, p. 101; R.S.1913, § 5533; C.S.1922, § 4829; C.S.1929, § 84-104.

**84-104 Thanksgiving Day; proclamation by Governor.**

The Governor shall by proclamation set apart the fourth Thursday in each November as a day of solemn and public thanksgiving to Almighty God for His blessings to us as a state and nation, and no business shall be transacted on that day at any department of state.

**Source:** Laws 1867, § 6, p. 101; R.S.1913, § 5534; C.S.1922, § 4830; C.S.1929, § 84-105; Laws 1941, c. 187, § 2, p. 756; C.S.Supp.,1941, § 84-105; R.S.1943, § 84-104; Laws 1945, c. 252, § 2, p. 789.

**Cross References**

Other sections bearing on holidays, see sections 25-2221, 62-301, 81-113, and 84-1001.

**84-104.01 Veterans Day; proclamation by Governor; prohibition of transaction of business by state departments; manner of observance.**

The Governor shall issue his proclamation each year designating Veterans Day and calling upon the public schools and citizens of Nebraska to observe such day as a patriotic day. Veterans Day shall be November 11, annually, unless such date falls on Saturday or Sunday, in which event the Governor may declare the preceding Friday or the following Monday as Veterans Day. No business shall be transacted on that day at any department of the State of Nebraska, except for necessary maintenance, highway construction inspection or in case of emergency. In pursuance to such proclamation, suitable exercises having reference to the wars and military campaigns of the United States, of

Nebraska's role therein, and honoring the veterans of such wars and campaigns may be held in all schools of the state, both public and private.

**Source:** Laws 1957, c. 392, § 1, p. 1056; Laws 1961, c. 448, § 1, p. 1373; Laws 1969, c. 844, § 3, p. 3181; Laws 1973, LB 34, § 3.

**84-104.02 Martin Luther King, Jr. Day; manner of observance.**

January 15 of each year shall be Martin Luther King, Jr. Day, and shall be set apart for holding suitable exercises in the schools of the state in recognition of the sacrifices of the late Martin Luther King, Jr., and his contributions to the betterment of society.

**Source:** Laws 1978, LB 329, § 1.

**Cross References**

Legal holiday declared for birthday of Martin Luther King, Jr., see sections 25-2221, 62-301, 81-113, and 84-1001.

**84-104.03 Martin Luther King, Jr. Day; proclamation by Governor; commemoration.**

(1) The Governor shall, prior to January 15 of each year, issue a proclamation inviting and urging the people of the State of Nebraska to observe Martin Luther King, Jr. Day in schools and other suitable places with appropriate ceremony and fellowship.

(2) The State Department of Education is directed to make, within the limits of funds available for such purpose, information available to the schools and all people of this state regarding Martin Luther King, Jr. Day and the observance thereof.

**Source:** Laws 1978, LB 329, § 2.

**84-104.04 George W. Norris Day; manner of observance.**

January 5 of each year shall be designated as George W. Norris Day, and shall be set apart for holding suitable exercises in the schools of the state in recognition of the many great benefits bestowed upon the people of the State of Nebraska and the United States as a whole, due in large part to the influence of George W. Norris. Such benefits include: (1) Establishment of a nonpartisan unicameral legislative body for the State of Nebraska; (2) establishment of the Tennessee Valley Authority; (3) the development of electricity in the rural areas of the nation; (4) passage of the twentieth amendment to the United States Constitution, commonly known as the lame duck amendment; and (5) the Norris-La Guardia Act which outlawed yellow-dog contracts and was a great boon to working men and women across the nation.

**Source:** Laws 1981, LB 18, § 1.

**84-104.05 George W. Norris Day; proclamation by Governor; commemoration.**

The Governor of the State of Nebraska shall issue a proclamation calling upon the officials of state government and subdivisions thereof to display the flags of the United States and Nebraska on all public buildings on January 5 of each year and inviting the people of the State of Nebraska to observe the day in

schools and other suitable places with appropriate ceremonies in commemoration of the life's work and contributions of George W. Norris.

**Source:** Laws 1981, LB 18, § 2.

**84-104.06 American Indian Day; legislative findings.**

The Legislature finds that American Indians were the first residents of the State of Nebraska. The Legislature further finds that these residents have made advances to the growth and development of the United States, the State of Nebraska, and their local communities, first through history and now through human and natural resources. The Legislature also finds that American Indians have made significant contributions and will continue to make contributions to the development of business, industry, education, the arts, and other areas which have made this country and this state a good place in which to live. The Legislature also finds that many of these contributions are unknown and unrecognized by many Nebraska citizens.

**Source:** Laws 1983, LB 90, § 1.

**84-104.07 American Indian Day; manner of observance.**

It is hereby declared that the fourth Monday in September of each year shall be known in Nebraska as American Indian Day and that on this day schools, clubs, and civic and religious organizations shall be encouraged to recognize the contributions of American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between American Indians and the non-Indian people of the State of Nebraska.

**Source:** Laws 1983, LB 90, § 2.

**84-104.08 American Indian Day; proclamation by Governor; commemoration.**

(1) The Governor shall, prior to the fourth Monday in September of each year, issue a proclamation inviting and urging the people of the State of Nebraska to observe American Indian Day with suitable ceremony and fellowship.

(2) The State Department of Education and the Commission on Indian Affairs shall make, within the limits of funds available for such purpose, information available to all people of this state regarding American Indian Day and the observance thereof.

**Source:** Laws 1983, LB 90, § 3.

**84-104.09 Workers Memorial Day; proclamation by Governor; commemoration.**

The Governor shall annually proclaim April 28 as Workers Memorial Day in remembrance of the courage and integrity of American workers. The Governor shall recommend that Workers Memorial Day be observed in an appropriate manner.

**Source:** Laws 1991, LB 199, § 1.

**84-105 Repealed. Laws 1953, c. 353, § 1.****84-106 Superintendent of Law Enforcement and Public Safety; deputies; appointment by Governor; bond or insurance; powers; actions against, where brought.**

The Governor is authorized to call to his or her assistance and to appoint persons necessary to assist the Superintendent of Law Enforcement and Public Safety to enforce the criminal laws. The superintendent and his or her assistants, who shall be designated deputy state sheriffs, shall qualify by taking and filing an oath in writing. Such persons shall be bonded or insured as required by section 11-201. The premiums may be paid for out of appropriations made to the state offices, departments, commissions, or other agencies to which such deputy state sheriffs are assigned. No deputy state sheriffs shall be assigned to the Department of Correctional Services. The superintendent and his or her assistants shall have the same powers in each of the counties of the state as the sheriffs have in their respective counties, insofar as the enforcement of the criminal laws is concerned. An action against the superintendent or any of his or her assistants for an act done by them or either of them by virtue of or under color of their offices respectively, or for any neglect of their official duties, shall be brought in Lancaster County, Nebraska, or in the county where the cause of action or some part thereof arose.

**Source:** Laws 1919, c. 173, § 1, p. 384; C.S.1922, § 4832; Laws 1927, c. 157, § 1, p. 419; C.S.1929, § 84-107; Laws 1941, c. 176, § 14, p. 694; C.S.Supp.,1941, § 84-107; R.S.1943, § 84-106; Laws 1961, c. 449, § 1, p. 1374; Laws 1978, LB 653, § 37; Laws 2004, LB 884, § 47; Laws 2006, LB 757, § 1.

**Cross References**

**Superintendent designated as chief officer of the Nebraska State Patrol,** see section 81-2001.

A deputized railroad security officer is constrained by the Fourth Amendment like any sheriff or police officer. *State v. Claus*, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

**84-107 State Day; observance; commemoration; proclamation.**

The Governor shall annually issue his proclamation designating State Day and calling upon the public schools and citizens of Nebraska to observe said day as a patriotic day. State Day shall be on March 1, annually, unless such day falls on Saturday or Sunday, in which event the Governor may declare the preceding Friday or the following Monday as State Day. In pursuance to said proclamation of the Governor, suitable exercises, having reference to Nebraska pioneers, Nebraska's natural resources, its history, and the event of the admission of Nebraska as a state to the Union, may be held in all schools of the state, both public and private.

**Source:** Laws 1931, c. 154, § 1, p. 413; C.S.Supp.,1941, § 84-109.

**84-108 Pulaski's Memorial Day; proclamation; observance.**

The Governor of the State of Nebraska is authorized and directed to issue a proclamation calling upon the officials of the state government and subdivisions thereof in local communities to display the flag of the United States on all public buildings on October 11 of each year and inviting the people of the State of Nebraska to observe the day in schools and other suitable places, with

appropriate ceremonies, in commemoration of the death of Brigadier General Casimir Pulaski.

**Source:** Laws 1931, c. 94, § 1, p. 263; C.S.Supp.,1941, § 84-110.

**84-108.01 Observances; not paid holidays.**

The observances provided for in sections 84-104.05, 84-104.08, 84-104.09, 84-107, and 84-108 shall not include provisions for such days to be declared paid holidays pursuant to subsection (3) of section 84-1001.

**Source:** Laws 1991, LB 199, § 2.

**84-109 State projects; control and supervision by Governor; when authorized; delegation of powers.**

Wherever statewide projects contributed to by any federal agency are initiated within the state, and there is no state agency which is authorized by law to sponsor the same, the same may be sponsored by the Governor under his general power to take care that the affairs of the state be efficiently and economically administered. This power granted to the Governor shall include the power to cooperate with, or to supervise or to act in an advisory capacity as to any and all projects contributed to by any federal agency, as to which statewide supervision, direction, or advisory control may be deemed expedient; *Provided*, that for the purpose of efficient execution of the powers hereby bestowed, the Governor may delegate actual performance of such duties as may be necessary to any department or agency of the state to which it may seem proper and expedient to him to make such delegation.

**Source:** Laws 1941, c. 175, § 1, p. 685; C.S.Supp.,1941, § 81-126; R.S.1943, § 84-109; Laws 1961, c. 450, § 1, p. 1375.

**84-110 Repealed. Laws 1973, LB 494, § 34.**

**84-111 Repealed. Laws 1973, LB 494, § 34.**

**84-111.01 Repealed. Laws 1973, LB 494, § 34.**

**84-112 Repealed. Laws 1973, LB 494, § 34.**

**84-113 Repealed. Laws 1973, LB 494, § 34.**

**84-114 Repealed. Laws 1973, LB 494, § 34.**

**84-115 Repealed. Laws 1973, LB 494, § 34.**

**84-116 Repealed. Laws 1973, LB 494, § 34.**

**84-117 Repealed. Laws 1973, LB 494, § 34.**

**84-118 Repealed. Laws 1973, LB 494, § 34.**

**84-119 Repealed. Laws 1973, LB 494, § 34.**

**84-119.01 Repealed. Laws 1971, LB 226, § 5.**

**84-119.02 Repealed. Laws 1971, LB 226, § 5.**

**84-119.03 Repealed. Laws 1971, LB 226, § 5.**

**84-119.04 Repealed. Laws 1971, LB 226, § 5.**

**84-119.05 Repealed. Laws 1971, LB 226, § 5.**

**84-120 Governor; succession to office.**

If the Lieutenant Governor or Speaker of the Legislature becomes incapable of performing the duties of Governor as provided by Article IV, section 16, of the Constitution of Nebraska, the duties of Governor shall be performed in the following order: Chairperson of the Executive Board of the Legislative Council, Chairperson of Committee on Committees, Chairperson of Committee on Judiciary, Chairperson of Committee on Government, Military and Veterans Affairs, Chairperson of Committee on Appropriations, Chairperson of Committee on Revenue, Chairperson of Committee on Education, Chairperson of Committee on Banking, Commerce and Insurance, Chairperson of Committee on Natural Resources, Chairperson of Committee on Agriculture, Chairperson of Committee on Health and Human Services, Chairperson of Committee on General Affairs, Chairperson of Committee on Urban Affairs, Chairperson of Committee on Business and Labor, and Chairperson of Committee on Transportation, until the vacancy is filled.

**Source:** Laws 1959, c. 499, § 1, p. 1499; Laws 1961, c. 451, § 2, p. 1378; Laws 1969, c. 831, § 1, p. 3153; Laws 1974, LB 596, § 1; Laws 1992, LB 965, § 5.

**84-121 Governor; succession to office; resignation required.**

If, for any of the reasons mentioned in Article IV, section 16, of the Constitution of Nebraska, the Lieutenant Governor is unable to perform the duties that devolve on him or her as Governor, then the Speaker of the Legislature shall, upon his or her resignation as speaker and as a member of the Legislature, become Governor.

If for any of the reasons mentioned in Article IV, section 16, of the Constitution of Nebraska, there is a vacancy in the office of Governor after the succession of the speaker to such office, then the chairperson of the several committees in the order listed in section 84-120 shall, after resignation as such chairperson and member of the Legislature, become Governor.

**Source:** Laws 1959, c. 449, § 2, p. 1500; Laws 1992, LB 965, § 6.

**84-122 Governor; succession to office; oath of office; effect.**

The taking of the oath of office by an individual specified in section 84-120, except the Lieutenant Governor, shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as Governor.

**Source:** Laws 1959, c. 449, § 3, p. 1500.

**84-123 Repealed. Laws 1963, c. 406, § 21.**

**84-124 Repealed. Laws 1963, c. 406, § 21.**

**84-125 Repealed. Laws 1963, c. 406, § 21.**

**84-126 Repealed. Laws 1963, c. 406, § 21.**

**84-127 Governor; disability; examination; conference; members; findings; effect.**

(1) Whenever it appears that the Governor is unable to discharge the duties of the office, the person next in line of succession to the office of Governor or the person who is dean of the College of Medicine of the University of Nebraska may call a conference consisting of the person who is dean of the College of Medicine of the University of Nebraska, the person who is chairperson of the Department of Psychiatry at the University of Nebraska Medical Center, and the dean of an accredited college of medicine located in the State of Nebraska to be selected by the other two members of the conference. The three members of the conference shall examine the Governor. After the examination, or if upon attempting to examine the Governor the members of the conference are unable to examine him or her because of circumstances beyond their control, they shall conduct a secret ballot and, by unanimous vote, may find that the Governor is temporarily unable to discharge the duties of the office.

(2) The finding of or failure to find a disability shall be made public, and in case the Governor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of Governor shall be notified. After receiving the notification, the powers, duties, and emoluments of the office of Governor shall, under Article IV, section 16, of the Constitution of Nebraska, devolve upon the person next in line of succession to the office of Governor.

**Source:** Laws 1961, c. 452, § 1, p. 1379; Laws 1969, c. 832, § 1, p. 3155; Laws 1987, LB 112, § 7.

**Cross References**

For succession to office of Governor, see section 84-120.

**84-128 Governor; disability; removal; examination; conference; members; findings; effect.**

Whenever a Governor who has been unable to discharge the duties of the office believes his disability to be removed, he may call a conference consisting of the three persons referred to as members of such a conference in subsection (1) of section 84-127. The three members of the conference shall examine the disabled Governor. After the examination they shall conduct a secret ballot and, by unanimous vote may find the disability removed, and their findings shall immediately be made public.

**Source:** Laws 1961, c. 452, § 2, p. 1380.

**84-129 Governor; disability; conference; member; unable to perform duty; successor.**

Should any of the officials named as members of the conference provided for in sections 84-127 and 84-128 be, for any reason, unable to perform the duties of his office, his place in such conference shall be taken by the person actually performing the duties of his office.

**Source:** Laws 1961, c. 452, § 3, p. 1380.

**84-130 Governor; disability; findings; appeal; procedure; validity of acts of successor to office of Governor.**

The Governor or any elector of the State of Nebraska may appeal to the Supreme Court from the decision of the members of the conference as provided in sections 84-127 and 84-128. Such appeal shall be perfected within one

month from the rendition of the decision of the conference by filing an appeal bond with the court and a copy of the decision of the conference. The cause shall be tried de novo, and shall be advanced for argument before the Supreme Court, and the Supreme Court shall render its judgment and write an opinion in such cases as speedily as possible. The decision of the conference may be modified, affirmed, or set aside. The decision of the conference shall remain in full force and effect unless and until such decision is modified or set aside by the Supreme Court. Any official acts of the person who succeeded to the office of Governor while any such appeal is pending shall be deemed to be fully valid for all purposes even though such conference decision be subsequently modified or set aside on appeal.

**Source:** Laws 1961, c. 452, § 4, p. 1380.

**84-131 Comprehensive state and regional planning; declaration of purpose.**

The Legislature hereby finds and declares that:

- (1) The people of the State of Nebraska have a fundamental interest in the orderly development of the state and its regions;
- (2) The state has a positive interest in the establishment of a comprehensive state and regional planning process and in the preparation and maintenance of long-range, comprehensive plans and programs for the physical, social, and economic development of the whole state and of each of its regions, which plans and programs can serve as a guide for local governmental units and state departments, agencies, and institutions;
- (3) The continued growth of the state, particularly in urban areas, and the general readjustment of people and the economy in many of the state's rural regions present problems which cannot be met by individual counties or cities;
- (4) Planning by local governmental units can be strengthened when conducted in relation to statewide and regional studies and planning; and
- (5) Direct leadership by the Governor is required to assure the coordination of state and local plans and programs with the planning and programming activities of federal, state, and regional bodies.

**Source:** Laws 1969, c. 775, § 1, p. 2937.

**84-132 Sections; purpose.**

It is the purpose of sections 84-131 to 84-141 to promote the development of the state's human, economic, and physical resources; to promote the health, safety, and general welfare of its citizens; and to secure the economical and efficient expenditure of the state's revenue by creating, within the executive branch, an office for development and review of policy alternatives. The office shall act as a directing, advisory, consulting, and coordinating agency to harmonize planning and policy development activities at all levels of government within Nebraska, and to stimulate public interest and participation in the social, economic, and physical development of the state.

**Source:** Laws 1969, c. 775, § 2, p. 2937; Laws 1979, LB 412, § 12.

**84-133 Governor's Policy Research Office; created; members; Director of Policy Research; appointment; duties; Governor's Policy Research Office Revolving Fund; created; use; investment.**

(1) There is created a Governor's Policy Research Office in the executive branch of state government. The Governor's Policy Research Office shall consist of the Governor, a Director of Policy Research who shall be appointed by the Governor and serve at his or her pleasure, and such other employees as are appointed by the Director of Policy Research to achieve the purposes of sections 84-131 to 84-141 and for which adequate funding is available.

(2) The Governor, through the Governor's Policy Research Office, shall encourage coordination of policy development in state government, inquire into the methods of policy and program development in state government, and provide adequate systems of records for policy development purposes and may prescribe the institution and uses of standards for effective state agency policy development.

(3) The Governor may direct any state department, agency, or institution of state government to furnish the Governor's Policy Research Office with such information, personnel, equipment, and services as are necessary to enable it to carry out its responsibilities and duties and to prescribe the terms thereof, including reimbursement of costs thereof, if any.

(4) The Governor shall be permitted to appoint the Director of Policy Research to serve as an ex officio, nonvoting member of any committee, commission, council, or other similar organization of a state agency, department, institution, or group of such bodies that is concerned with planning, research, or policy development. Opportunities for such representation on any public, nonfederal, regional bodies concerned with planning or research and operating wholly or partially within Nebraska shall also be provided when requested by the Governor. The Director of Policy Research may in turn delegate such membership to his or her staff or to an appropriate official of another state agency. The state, interstate, and regional organizations mentioned in this subsection shall make any necessary organizational adjustments to receive the ex officio member if requested to do so by the Governor.

(5) The Governor may delegate any of his or her powers, duties, and responsibilities as conferred by sections 84-131 to 84-141 to the Director of Policy Research.

(6) There is hereby created a fund to be known as the Governor's Policy Research Office Revolving Fund. All money credited to the fund shall be used by the Governor's Policy Research Office to enable it to carry out its statutory responsibilities and duties in research and policy development. Any money in the 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.

**Source:** Laws 1969, c. 775, § 3, p. 2938; Laws 1979, LB 412, § 13; Laws 1985, LB 421, § 1; Laws 1988, LB 1106, § 2; Laws 1995, LB 7, § 143.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

#### **84-134 Advisory committees or councils; members; appointment; no compensation; expenses; meetings.**

The Governor may establish special or general advisory committees or councils to the Governor's Policy Research Office and appoint the members

thereof, who shall serve for stated times or at his or her pleasure. Members shall serve without compensation, but may be reimbursed for the necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees. The Governor may designate the chairperson and such other officers as he or she may deem necessary for each advisory committee or council. Advisory committees or councils established pursuant to the provisions of this section shall meet at the call of their chairperson or of the Director of Policy Research.

**Source:** Laws 1969, c. 775, § 4, p. 2939; Laws 1979, LB 412, § 14; Laws 1981, LB 204, § 210.

**84-135 Governor's Policy Research Office; principal state office to coordinate policy development; duties; Governor's Policy Research Cash Fund; created; use; investment.**

The Governor's Policy Research Office shall be the principal state agency to coordinate policy development relating to the state's social, economic, and physical resources and to coordinate programs administered by the state and its political subdivisions. It shall provide available information, assistance, and staff support to the executive and legislative branches by all appropriate means. Furthermore, the office may, except as otherwise specified by the Governor:

(1) Identify long-range state problems and development opportunities and propose alternative policy options which may be submitted by the Governor to the Legislature for its consideration;

(2) Formulate for the Governor or the Legislature policy options for the orderly and coordinated growth of the state, except that functional plans shall only be formulated by the Governor's Policy Research Office when no department, agency, or institution has been given the responsibility for such planning or when such a body is not fulfilling its assigned planning responsibilities;

(3) Prepare special reports and furnish the results of the office's research and other activities through publications, memoranda, briefings, and expert testimony;

(4) Establish and require the use of standard basic population and economic data for all state departments, agencies, and institutions;

(5) Analyze and project the quality and quantity of services which may be necessary for the continued and orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of local units of government, area planning commissions, transportation authorities, development districts, regional councils, private enterprise, state government, the federal government, and other public and private bodies;

(6) Encourage the coordination of the planning activities of all state departments, agencies, and institutions and political subdivisions of the state;

(7) Advise, if requested, and consult with regional, joint, and local planning agencies;

(8) Monitor and participate in interstate policy development, planning, and other activities related thereto;

(9) Survey, review, and appraise the accomplishments of state government in achieving the goals and objectives set forth in legislation or reflected in directives from the Governor or state agencies;

(10) Assist the Department of Administrative Services with the capital improvement programming process;

(11) Apply for and accept advances, loans, grants, contributions, and any other form of assistance from the federal government, the state, or any public or private sources for the purposes of sections 84-131 to 84-141 under such conditions as may be required and execute contracts or agreements in connection therewith. The office may include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal laws as it may deem reasonable and appropriate and which are not inconsistent with the purposes of sections 84-131 to 84-141. There is hereby created a fund to be known as the Governor's Policy Research Cash Fund. All money credited to the fund shall be used by the Governor's Policy Research Office to carry out the responsibilities and duties of this section. Any money in the 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;

(12) Serve as state government's applicant agency, or coapplicant when existing or future federal legislation specifically requires another applicant, but not necessarily administering agency, for all planning, programming, or research grants to transportation authorities and to state departments, agencies, or institutions. The Governor's Policy Research Office may delegate its applicant or coapplicant role upon such terms and for such periods of time as it shall deem appropriate;

(13) Enter into agreements with state departments and other agencies of state government and Nebraska state institutions of higher education for the temporary use of personnel in pursuit of the purposes of sections 84-131 to 84-141;

(14) Contract for professional or consultant services with state departments and agencies, Nebraska institutions of higher education, other public bodies, and private sources in pursuit of the purposes of sections 84-131 to 84-141;

(15) Review and comment on all local and regional applications for federal planning assistance. This authority may be delegated to regional planning commissions, development districts, regional councils, or such other state agency upon such terms as it deems appropriate; and

(16) Exercise all other powers necessary and proper for the discharge of its duties, including the promulgation of reasonable rules and regulations.

The Governor's Policy Research Office shall periodically review the organization and programs of state government and make recommendations to the Governor on ways to more effectively organize state government, eliminate duplication of units of government and of programs, and encourage efficiency and economy.

**Source:** Laws 1969, c. 775, § 5, p. 2939; Laws 1979, LB 412, § 15; Laws 1985, LB 421, § 2; Laws 1992, LB 573, § 13; Laws 1994, LB 1066, § 131.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-135.01 Repealed. Laws 1979, LB 412, § 32.**

**84-136 Governor's Policy Research Office; state development policy alternatives; powers.**

(1) At the direction of the Governor, the Governor's Policy Research Office may prepare and issue long-range state development policy alternatives based on studies, plans, requirements, and operations of departments, agencies, and institutions of state, local, and regional units of government and the federal government. Such policies shall be based upon the existing and prospective resources and needs of the people of Nebraska and shall identify and stress alternative statewide goals, objectives, and opportunities.

(2) State development policy alternatives shall take into consideration the physical, economic, and social development of the state and may include, but not be limited to, the following:

(a) Population and economic analysis with projections for each region and subregion of the state;

(b) General land-use policy alternatives for urban development, agriculture, mineral extraction, forests, open space, and other purposes;

(c) Policy alternatives for housing and the development and redevelopment of urban areas and other places of settlement;

(d) Policy alternatives for the balanced development of airport, highway, and other transportation facilities, including rail, ship, and pipelines;

(e) Policy alternatives for health services and facilities, manpower development, employment opportunity, education, elimination of poverty, law enforcement, and other programs;

(f) Projection of needs for public facilities, including but not limited to headquarters and district state office buildings, state colleges and universities, and state health, welfare, and correctional institutions;

(g) Policy alternatives for the prudent exploitation, conservation, and replenishment of the state's natural resources; and

(h) Policy alternatives for intergovernmental relations and governmental structure.

**Source:** Laws 1969, c. 775, § 6, p. 2942; Laws 1979, LB 412, § 16.

**84-137 Governor's Policy Research Office; functional plans; Governor; powers.**

(1) In consultation with appropriate state and local governmental agencies, the Governor's Policy Research Office may prepare, or cause to be prepared, and issue on behalf of the Governor, a series of medium-range or long-range development plans on a specific subject or service area of government. Such plans, called functional plans, may include one of the following subject areas: Outdoor recreation, water resources, transportation, law enforcement and the administration of criminal justice, housing, education, social and economic development, physical and mental health services and facilities, employment, poverty, manpower development, and other broad areas of state responsibility.

(2) The Governor, through the Governor's Policy Research Office, may direct each department, agency, and institution of the state to designate from among its employees and officers a planning officer who shall be directly responsible to the chief executive officer of the department, agency, or institution for internal and interagency planning and programming activities and who shall maintain continuing liaison with personnel of the Governor's Policy Research Office.

(3) Functional plans, whether specifically required as a condition to federal loans or grants or not, prepared by transportation authorities, natural resources districts, state departments, agencies, or institutions, shall be issued only after review and approval by the Governor's Policy Research Office.

(4) Functional plans and revisions thereof may be transmitted to the Legislature by the Governor for its consideration and action.

**Source:** Laws 1969, c. 775, § 7, p. 2943; Laws 1979, LB 412, § 17.

**84-138 Repealed. Laws 1979, LB 412, § 32.**

**84-139 Plans of state agencies; approval by Governor's Policy Research Office.**

No state agency functional plan of the type referred to in section 84-137 may be promulgated, nor may any planning program of a state agency, department, or institution be undertaken, unless the Governor's Policy Research Office finds that such plans or planning programs are not in conflict with the laws of the State of Nebraska and executive orders of the Governor.

**Source:** Laws 1969, c. 775, § 9, p. 2944; Laws 1979, LB 412, § 18.

**84-140 Repealed. Laws 1988, LB 811, § 1.**

**84-140.01 Repealed. Laws 1995, LB 14, § 1.**

**84-141 Nebraska Commission on Law Enforcement and Criminal Justice; planning programs; consistent with planning policies of Governor's Policy Research Office.**

The planning programs of the Nebraska Commission on Law Enforcement and Criminal Justice shall be consistent with the planning policies of the Governor's Policy Research Office.

**Source:** Laws 1969, c. 775, § 14, p. 2947; Laws 1979, LB 412, § 20.

#### Cross References

Nebraska Commission on Law Enforcement and Criminal Justice, powers and duties, see section 81-1423.

**84-142 Repealed. Laws 1992, LB 573, § 16.**

**84-143 Repealed. Laws 1992, LB 573, § 16.**

**84-144 Repealed. Laws 1992, LB 573, § 16.**

**84-145 Repealed. Laws 1992, LB 573, § 16.**

**84-146 Repealed. Laws 1992, LB 573, § 16.**

**84-147 Repealed. Laws 1992, LB 573, § 16.**

**84-148 Repealed. Laws 1992, LB 573, § 16.**

**84-149 Repealed. Laws 1992, LB 573, § 16.**

**84-150 Repealed. Laws 1992, LB 573, § 16.**

**84-151 Repealed. Laws 1985, LB 421, § 6.**

**84-152 Transferred to section 13-301.**

**84-153 Transferred to section 13-302.**

**84-154 Repealed. Laws 1985, LB 421, § 6.**

**84-155 Transferred to section 19-912.01.**

**84-156 Repealed. Laws 1985, LB 421, § 6.**

**84-157 Repealed. Laws 1985, LB 421, § 6.**

**84-158 Repealed. Laws 1985, LB 421, § 6.**

**84-159 Repealed. Laws 1985, LB 421, § 6.**

**84-160 Repealed. Laws 1985, LB 421, § 6.**

**84-161 Comprehensive development plans; Governor's Policy Research Office; assist in preparation; when.**

The Governor's Policy Research Office shall not contract with or provide assistance to any municipality or county to prepare comprehensive development plans or land-use regulatory proposals, unless such assistance shall first be requested in writing by the municipality or county.

**Source:** Laws 1978, LB 186, § 14; Laws 1979, LB 412, § 30.

**84-162 Vital resource emergencies; legislative findings.**

The Legislature finds, for purposes of sections 84-162 to 84-167, that:

(1) Water for domestic, agricultural, and industrial use, food for domestic use, and adequate energy supplies are vital resources needed to sustain life;

(2) The interruption of supplies of these resources or the threat of such interruption may cause severe hardship or threaten the health and lives of the citizens of the state;

(3) The Governor, as chief executive, should have adequate means at his or her disposal to insure the health and welfare of the citizens of the state; and

(4) Sections 84-162 to 84-167 provide the additional emergency powers necessary for the Governor to act in specified vital resource emergencies.

**Source:** Laws 1980, LB 954, § 51.

**84-163 Terms, defined.**

As used in sections 84-162 to 84-167, unless the context otherwise requires:

(1) Vital resource crisis shall mean the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from the shortage of any vital resource as the result of interruption or shortage of electricity, petroleum-based fuels, uranium, coal, or any other form of energy; and

(2) Vital resource shall include food for domestic use, water for domestic, agricultural, or industrial use, and electricity, petroleum-based fuels, uranium, coal, or any other form of energy.

**Source:** Laws 1980, LB 954, § 52.

**84-164 Vital resource emergency; Governor declare; when; termination.**

A vital resource emergency shall be declared by the Governor if he or she finds that a vital resource crisis is imminent or has occurred. Such declaration shall be promptly filed with the Secretary of State. The state of emergency shall continue until the Governor finds that the threat or danger has passed or that the vital resource emergency has been dealt with to the extent that emergency conditions no longer exist and therefor terminates the state of emergency by proclamation. No state of emergency shall continue for longer than fifteen days unless renewed by proclamation of the Governor. The Legislature may terminate a state of emergency at any time, upon passage of a resolution.

**Source:** Laws 1980, LB 954, § 53.

**84-165 Vital resource emergency; legislative determination; response of Governor.**

If the Legislature determines by resolution that a vital resource emergency exists it shall transmit such resolution to the Governor. The Governor shall respond in writing to such legislative resolution within ten days, stating his or her plan, if an emergency proclamation is to be issued pursuant to the resolution, and stating the reason or reasons for not issuing such proclamation if action is not going to be taken.

**Source:** Laws 1980, LB 954, § 54.

**84-166 Vital resource emergency; Governor; powers.**

Pursuant to the proclamation of a vital resource emergency issued as provided in section 84-164, the Governor by executive order may:

- (1) Regulate the operating hours of vital resource consuming instrumentalities including state government, political subdivisions, private institutions, and business facilities to the extent that the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state;
- (2) Establish a system for the distribution of the supply of energy or vital resource;
- (3) Curtail, regulate, or direct the public and private transportation and use of the vital resource which is in short supply, to the extent necessary, so long as such regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state;
- (4) Delegate any administrative authority vested in him or her to the State Energy Office or any other state agency or its respective director; and
- (5) Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies for the purpose of carrying out any emergency measures taken pursuant to sections 84-162 to 84-167.

**Source:** Laws 1980, LB 954, § 55.

**84-167 Emergency measures; exemption; issued by Governor.**

Any person, association, partnership, limited liability company, or corporation may appeal to the Governor requesting a partial or complete exemption from the emergency measures ordered pursuant to sections 84-162 to 84-167. Any such exemption issued by the Governor shall be in writing and shall clearly

identify those persons exempted, the scope of such exemption, and the reasons for granting such exemptions.

**Source:** Laws 1980, LB 954, § 56; Laws 1993, LB 121, § 548.

#### **84-168 Acceptance of cession or retrocession of federal jurisdiction; filing.**

By appropriate executive order, the Governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority. An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the register of deeds of the county in which the affected real estate is located.

**Source:** Laws 1993, LB 545, § 1.

## **ARTICLE 2**

### **ATTORNEY GENERAL**

#### **Cross References**

##### **Constitutional provisions:**

- Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.
- Parole and pardons, see Article IV, section 13, Constitution of Nebraska.
- Salary, see Article IV, section 25, Constitution of Nebraska.
- Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

**Boxing and wrestling violations**, see section 81-8,142.01.

**Campaign Finance Limitation Act**, see section 32-1601.

##### **Duties with respect to:**

- Agencies, implementation of laws, see section 84-731 et seq.
- Armory sites, condemnation proceedings, see section 18-1003.
- Banks and credit unions, violations, see section 8-1,137.
- Beekeeping, violations, see section 81-2,179.
- Bingo Act, Nebraska, violations, see section 9-262.
- Boxing and wrestling matches, violations, see section 81-8,142.01.
- Building and loan associations, possession of records, see section 8-334.
- Chemigation Act, Nebraska, see section 46-1138.
- Child care licensure, violations, see section 71-1915.
- Commercial Fertilizer and Soil Conditioner Act, Nebraska, see section 81-2,162.19.
- County and City Lottery Act, Nebraska, see section 9-652.
- County budget forms, see section 23-905.
- Depositories for state funds, bond approval, see section 77-2303.
- Elections, see sections 32-206 and 32-703.
- Environmental Protection Act, see sections 81-1508 and 81-1531.02.
- Equal Opportunity Commission, see section 48-1116.
- Initiative and referendum, ballot titles, see section 32-1410.
- Insurance proceedings, see section 44-395.
- Integrated Solid Waste Management Act, see section 81-1508.
- Livestock Sellers Protective Act, Nebraska, see section 54-1805.
- Livestock Waste Management Act, see section 81-1508.
- Lottery Act, State, see section 9-818.
- Lottery and Raffle Act, Nebraska, see section 9-434.
- Metabolic diseases, reporting violations, see section 71-524.
- Militia, state, see section 55-171.
- Monopolies and restraint of trade, see Chapter 59, articles 5, 8, 15, 16, and 17.
- Mortgage Bankers Registration and Licensing Act, see section 45-717.
- Pesticide Act, see section 2-2647 et seq.
- Pickle Card Lottery Act, Nebraska, see section 9-352.
- Plant Protection and Plant Pest Act, see section 2-10,115.
- Political Accountability and Disclosure Act, Nebraska, violations, see section 49-14,133.
- Public Accountability Act, see sections 1-147 and 1-166.
- Public funds, requirements, see sections 77-2311 and 77-2384.
- Public Service Commission, see section 75-141.
- Redevelopment Act, Nebraska, see section 59-507.
- Restraint of trade, unlawful, see sections 59-811 and 59-828.
- Rules of administrative agencies, see section 84-905.01.
- Safe Drinking Water Act, Nebraska, see section 71-5312.
- Seed Law, Nebraska, see sections 81-2,147.07 and 81-2,147.09.
- State officers and employees, provide counsel, see section 81-8,239.06.
- Student financial aid, violations, see section 85-9,136.
- Tort Claims Act, State, see section 81-8,212.

## ATTORNEY GENERAL

Unemployment compensation, see sections 48-642 and 48-667.  
Uniform Credentialing Act, see sections 38-190 to 38-1,109, 38-1,124, 38-1,137, and 38-1,139.  
Uniform Interstate Family Support Act, see section 42-721.  
Weights and Measures Act, see section 89-198.  
Workers' compensation, see sections 48-128, 48-144.04, 48-190, and 48-197.

**Election**, see section 32-507.

**Expenses**, see sections 81-1174 to 81-1177.

**Impeachment**, see section 24-101.

**Legal advisor for:**

Abstracters Board of Examiners, see section 76-553.  
Administrative Services, Department of, see sections 81-1108.17 and 81-1118.02.  
Agricultural organizations, see section 2-2802.  
Agriculture, Department of, see section 2-1809.  
Counties, Retirement System for Nebraska, see section 23-2314.  
Engineers and Architects, Board of, see section 81-3430.  
Fire Marshal, State, see section 81-504.  
Geologists, Board of, see section 81-3522.  
Insurance, Department of, see sections 44-395 and 44-2006.  
Judicial Qualifications, Commission on, see section 24-724.  
Labor, Commissioner of, see sections 48-446, 48-642, and 48-667.  
Landscape Architects, State Board of, see section 81-8,191.  
Liquor Control Commission, Nebraska, see section 53-115.  
Motor Vehicle Industry Licensing Board, Nebraska, see section 60-1405.  
Oil and Gas Conservation Commission, Nebraska, see section 57-918.  
Public Accountancy, Nebraska State Board of, see section 1-147.  
Public Service Commission, see section 75-108.  
Real Estate Commission, State, see section 81-885.09.  
Real Property Appraiser Board, see section 76-2248.  
Secretary of State, see sections 32-202 and 32-703.  
State canvassers, board of, see section 32-1037.  
State Claims Board, see sections 81-8,212, 81-8,220, 81-8,297, and 81-8,304.  
State Employees Retirement System, see section 84-1316.  
State Highway Commission, see section 39-2204.  
State Patrol, Nebraska, see section 81-2009.  
State Patrol Retirement System, Nebraska, see section 81-2024.  
Tax Commissioner, see sections 9-818 and 77-2612.

**Member of:**

Intergovernmental Cooperation, Governor's Committee on, see section 81-817.  
Law Enforcement and Criminal Justice, Nebraska Commission on, see section 81-1417.  
Pardons, Board of, see section 83-1,126.  
State canvassers, board of, see section 32-1037.  
State Records Board, see section 84-1204.

**Quo warranto**, by, see sections 25-21,121 to 25-21,148.

### Section

- 84-201. Department of Justice; Attorney General; head.  
84-201.01. Attorney General; salary.  
84-201.02. Restriction on private practice of law.  
84-202. Department of Justice; powers and duties.  
84-203. Attorney General; actions by or against the state; duties.  
84-204. Attorney General; power in counties concurrent with county attorney.  
84-205. Attorney General; powers and duties; Child Protection Division.  
84-206. Deputy attorney general; bond or insurance; powers and duties; compensation.  
84-206.01. Attorney General; actions relating to boundary lines; duty.  
84-206.02. Repealed. Laws 1957, c. 220, § 4.  
84-206.03. Repealed. Laws 1959, c. 266, § 1.  
84-206.04. Repealed. Laws 1967, c. 402, § 1.  
84-207. Attorney General; actions involving use of waters of interstate streams; duty.  
84-208. Attorney General; actions involving use of waters in interstate streams; special counsel; expense.  
84-209. Attorney General; actions against members of Legislature; defense; when authorized.  
84-210. Attorney General; actions against members of Legislature; defense when Attorney General disqualified.  
84-211. Attorney General; antitrust division; violations of federal antitrust laws; duties.  
84-212. Attorney General; antitrust matters; powers; duties; damages; proof; distribution.

- Section  
 84-213. Attorney General; antitrust matters; investigation; powers; duties; subpoena.  
 84-214. Antitrust matters; labor of human beings; exempt.  
 84-215. Act of Legislature; Attorney General opinion, unconstitutional; refusal to implement by state officer; action to determine validity.  
 84-216. State agency; failure or refusal to implement statute; action by Attorney General; when; costs.  
 84-217. Sections; cumulative to existing remedies.  
 84-218. Repealed. Laws 1987, LB 573, § 4.  
 84-219. Department of Justice Revolving Fund; created; use; investment.  
 84-220. Repealed. Laws 2006, LB 1061, § 28.  
 84-221. Repealed. Laws 2007, LB 322, § 43.

**84-201 Department of Justice; Attorney General; head.**

There is hereby constituted an executive department to be known as the Department of Justice, and the Attorney General shall be the head of this department.

**Source:** Laws 1919, c. 205, § 1, p. 904; C.S.1922, § 4834; C.S.1929, § 84-201.

Attorney General has right to appeal from order of State Board of Equalization and Assessment. State ex rel. Sorensen v. State Board of Equalization and Assessment, 123 Neb. 259, 242 N.W. 609 (1932), 243 N.W. 264 (1932).

Attorney General on own initiative had authority to maintain suit to enjoin repeated violations of anti-gambling statutes in

form of pari-mutuel betting on horse races. State ex rel. Sorensen v. Ak-Sar-Ben Exposition Co., 121 Neb. 248, 236 N.W. 736 (1931).

Attorney General is clothed with power to prosecute criminal actions in any county in the state. Lower v. State, 106 Neb. 666, 184 N.W. 174 (1921).

**84-201.01 Attorney General; salary.**

Until January 4, 2007, the annual salary of the Attorney General shall be seventy-five thousand dollars. Commencing January 4, 2007, the annual salary of the Attorney General shall be ninety-five thousand dollars. The salary of the Attorney General shall be payable in equal monthly installments.

**Source:** Laws 1963, c. 538, § 1, p. 1684; Laws 1965, c. 567, § 1, p. 1853; Laws 1969, c. 833, § 1, p. 3156; Laws 1973, LB 246, § 1; Laws 1978, LB 541, § 1; Laws 1986, LB 43, § 4; Laws 1990, LB 503, § 3; Laws 2000, LB 956, § 3; Laws 2006, LB 817, § 3.

**84-201.02 Restriction on private practice of law.**

The Attorney General and all permanent deputy and assistant attorneys general shall not engage in the private practice of law for compensation or lobbying for compensation.

**Source:** Laws 1984, LB 826, § 1.

**84-202 Department of Justice; powers and duties.**

The Department of Justice shall have the general control and supervision of all actions and legal proceedings in which the State of Nebraska may be a party or may be interested, and shall have charge and control of all the legal business of all departments and bureaus of the state, or of any office thereof, which requires the services of attorney or counsel in order to protect the interests of the state.

**Source:** Laws 1919, c. 205, § 2, p. 904; C.S.1922, § 4835; C.S.1929, § 84-202; R.S.1943, § 84-202; Laws 1953, c. 354, § 1, p. 1131.

Constitutionality of act creating Department of Justice was raised but not decided. *Smith v. State*, 109 Neb. 579, 191 N.W. 687 (1922).

Attorney General is authorized to institute suits on official bond of state officer, and admissions in pleadings verified by

him bind state. *Paxton v. State*, 59 Neb. 460, 81 N.W. 383 (1899).

#### **84-203 Attorney General; actions by or against the state; duties.**

The Attorney General is authorized to appear for the state and prosecute and defend, in any court or before any officer, board or tribunal, any cause or matter, civil or criminal, in which the state may be a party or interested. If the Director-State Engineer shall have drawn any plans or specifications for the construction of bridges or other public structures for any county in this state, and such plans shall have been adopted by any such county and bids let thereon, and the same constructed by any person, corporation or association, and suit is brought against such county, person, corporation or association for damages on account of the infringement of any alleged United States patent, in any court, state or federal, it shall be the duty of the Attorney General to intervene in said suit in behalf of the state and defend it, or, if intervention cannot be had, then the Attorney General shall take charge of the suit for such county, person, corporation or association, and defend it, or he may employ counsel to do so, and the fee of such counsel and other expenses shall be paid from appropriations made to the office of the Attorney General.

**Source:** Laws 1919, c. 205, § 3, p. 904; C.S.1922, § 4836; C.S.1929, § 84-203.

Attorney General is not authorized to enter voluntary appearance of state in workmen's compensation case. *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939).

Assistant attorney general does not have authority to sign informations. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

Voluntary appearance by the Attorney General on behalf of the state and his failure to object to the jurisdiction of the court

could not bind state. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

Attorney General has no general authority to appear in suits against state in federal court and consent to waiver of state's immunity from suit. *O'Connor v. Slaker*, 22 F.2d 147 (8th Cir. 1927).

#### **84-204 Attorney General; power in counties concurrent with county attorney.**

The Attorney General and the Department of Justice shall have the same powers and prerogatives in each of the several counties of the state as the county attorneys have in their respective counties.

**Source:** Laws 1919, c. 205, § 4, p. 905; C.S.1922, § 4837; C.S.1929, § 84-204.

Attorney General has same authority to prosecute exceptions in the Supreme Court as the county attorney. *State v. Hutter*, 145 Neb. 798, 18 N.W.2d 203 (1945).

Attorney General has right to invoke judgment of appellate court by writ of error to State Board of Equalization upon order

reducing assessments entered by board. *State ex rel. Sorensen v. State Board of Equalization and Assessment*, 123 Neb. 259, 242 N.W. 609 (1932), 243 N.W. 264 (1932).

Assistant attorney general has no authority to make and sign information in his own name, and information so signed is nullity. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

#### **84-205 Attorney General; powers and duties; Child Protection Division.**

The duties of the Attorney General shall be:

- (1) To appear and defend actions and claims against the state;
- (2) To investigate, commence, and prosecute any and all actions resulting from violations of sections 32-1401 to 32-1417;
- (3) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue. He or she

shall have authority to require aid and assistance of the county attorney in all matters pertaining to the duties of the Attorney General in the county of such county attorney and may, in any case brought to the Court of Appeals or Supreme Court from any county, demand and receive the assistance of the county attorney from whose county such case is brought;

(4) To give, when required, without fee, his or her opinion in writing upon all questions of law submitted to him or her by the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, Public Service Commission, or Legislature;

(5) At the request of the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission, to prosecute any official bond or any contract in which the state is interested which is deposited with any of them and to prosecute or defend for the state all civil or criminal actions and proceedings relating to any matter connected with any of such officers' departments if, after investigation, he or she is convinced there is sufficient legal merit to justify the proceeding. Such officers shall not pay or contract to pay from the funds of the state any money for special attorneys or counselors-at-law unless the employment of such special counsel is made upon the written authorization of the Governor or the Attorney General;

(6) To enforce the proper application of money appropriated by the Legislature to the various funds of the state and prosecute breaches of trust in the administration of such funds;

(7) To prepare, when requested by the Governor, Secretary of State, State Treasurer, or Auditor of Public Accounts or any other executive department, proper drafts for contracts, forms, or other writings which may be wanted for the use of the state and report to the Legislature, whenever requested, upon any business pertaining to the duties of his or her office;

(8) To pay all money received, belonging to the people of the state, immediately upon receipt thereof, into the state treasury;

(9) To keep a record in proper books provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him or her in behalf of the state and all proceedings had in relation thereto, and deliver the same to his or her successor in office;

(10) To appear for the state and prosecute and defend all civil or criminal actions and proceedings in the Court of Appeals or Supreme Court in which the state is interested or a party. When requested by the Governor or the Legislature, the Attorney General shall appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party before any court, officer, board, tribunal, or commission;

(11) To prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible. The Attorney General shall add to, amend, or revise the model rules as necessary for the proper guidance of agencies;

(12) To include within the budget of the office sufficient funding to assure oversight and representation of the State of Nebraska for district court appeals of administrative license revocation proceedings under section 60-498.04; and

(13) To create a Child Protection Division to be staffed by at least three assistant attorneys general who each have five or more years of experience in the prosecution or defense of felonies or misdemeanors, including two years in the prosecution or defense of crimes against children. Upon the written request of a county attorney, the division shall provide consultation and advise and assist in the preparation of the trial of any case involving a crime against a child, including, but not limited to, the following offenses:

- (a) Murder as defined in sections 28-303 and 28-304;
- (b) Manslaughter as defined in section 28-305;
- (c) Kidnapping as defined in section 28-313;
- (d) False imprisonment as defined in sections 28-314 and 28-315;
- (e) Child abuse as defined in section 28-707;
- (f) Pandering as defined in section 28-802;
- (g) Debauching a minor as defined in section 28-805; and
- (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

Any offense listed in subdivisions (a) through (h) of this subdivision shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301. Such crimes shall not include matters involving dependent and neglected children, infraction violations, custody, parenting time, visitation, or other access matters, or child support. If the county attorney declines in writing to prosecute a case involving a crime against a child because of an ethical consideration, including the presence or appearance of a conflict of interest, or for any other reason, the division shall, upon the receipt of a written request of the county attorney, the Department of Health and Human Services, the minor child, the parents of the minor child, or any other interested party, investigate the matter and either decline to prosecute the matter or initiate the appropriate criminal proceedings in a court of proper jurisdiction.

For purposes of this subdivision, child or children shall mean an individual or individuals sixteen years of age or younger.

**Source:** Laws 1919, c. 205, § 5, p. 905; C.S.1922, § 4838; C.S.1929, § 84-205; R.S.1943, § 84-205; Laws 1972, LB 1456, § 4; Laws 1973, LB 14, § 2; Laws 1990, LB 1246, § 17; Laws 1991, LB 732, § 157; Laws 1994, LB 446, § 13; Laws 1996, LB 1044, § 977; Laws 1997, LB 758, § 6; Laws 2003, LB 209, § 18; Laws 2007, LB554, § 45.

#### Cross References

**Nebraska Criminal Code**, see section 28-101.

The Attorney General acted in this case pursuant to a request of the Governor as provided in this section. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

Attorney General was required upon request of Governor to bring declaratory judgment proceeding to determine constitutionality of statute. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Action to test constitutionality of statute was properly brought by Attorney General at direction of the Governor. State ex rel. Beck v. City of York, 164 Neb. 223, 82 N.W.2d 269 (1957).

Attorney General, at request of Department of Roads and Irrigation, is authorized to bring injunction suit to enforce

compliance with irrigation laws. State ex rel. Sorensen v. Mitchell Irrigation District, 129 Neb. 586, 262 N.W. 543 (1935).

Officers of departments and state institutions are entitled to opinion and advice of Attorney General upon questions of law. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

Attorney General may authorize other attorneys to appear for him and assert right on behalf of state to public charity. In re Creighton's Estate, 91 Neb. 654, 136 N.W. 1001 (1912).

Attorney General may, on behalf of state, sue in equity to enjoin common carriers whose rates are fixed by law from exacting excessive rates. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

Where Attorney General refuses to file brief on ground that evidence is insufficient, conviction will ordinarily be reversed. *Lorenz v. State*, 53 Neb. 463, 73 N.W. 935 (1898); *George v. State*, 44 Neb. 757, 62 N.W. 1094 (1895).

Attorney General is required to prosecute or defend any case in Supreme Court in which state is party or interested. State ex

rel. *Board of Transportation v. Fremont, E. & M. V. R.R. Co.*, 22 Neb. 313, 35 N.W. 118 (1887).

Attorney General cannot appear in federal court and consent to waiver of state's immunity from suit. *O'Connor v. Slaker*, 22 F.2d 147 (8th Cir. 1927).

**84-206 Deputy attorney general; bond or insurance; powers and duties; compensation.**

The Attorney General shall appoint a deputy attorney general, who shall be bonded or insured as required by section 11-201. A copy of the appointment shall be deposited in the office of the Secretary of State. The deputy may do and perform, in the absence of the Attorney General, all the acts and duties that may be authorized and required to be performed by the Attorney General. The Attorney General shall be responsible for all acts of such deputy. The deputy shall receive a salary of such amount as shall be fixed by the Attorney General, to be paid on a monthly basis by warrant of the Director of Administrative Services on the State Treasurer. The salary of the deputy attorney general and each full-time assistant attorney general shall be not less than twenty thousand dollars.

**Source:** Laws 1887, c. 84, § 1, p. 629; R.S.1913, § 5542; Laws 1919, c. 205, § 6, p. 907; Laws 1921, c. 107, § 2, p. 379; C.S.1922, § 4839; C.S.1929, § 84-206; Laws 1943, c. 228, § 1, p. 775; R.S.1943, § 84-206; Laws 1947, c. 346, § 4, p. 1092; Laws 1951, c. 338, § 8, p. 1119; Laws 1953, c. 355, § 1, p. 1132; Laws 1955, c. 347, § 1, p. 1066; Laws 1957, c. 220, § 1, p. 759; Laws 1959, c. 451, § 1, p. 1503; Laws 1963, c. 535, § 1, p. 1680; Laws 1973, LB 246, § 2; Laws 1978, LB 653, § 38; Laws 2004, LB 884, § 48.

**Cross References**

**For bonding provisions**, see Chapter 11.

**For other provisions as to deputy state officers**, see Chapter 84, article 8.

Attorney General has power to designate an assistant attorney general to appear in his stead in trial of a criminal cause, and it is not necessary that the assistant be a bonded deputy under above section. *Carlsen v. State*, 127 Neb. 11, 254 N.W. 744 (1934).

Assistant attorney general has no power to make and sign information in his own name, and information so signed is a nullity. *Lower v. State*, 106 Neb. 666, 184 N.W. 174 (1921).

Prohibition against creation of new executive department does not prevent the appointment of deputy. In re Appropriations for Deputies, Etc., 25 Neb. 662, 41 N.W. 643 (1889).

**84-206.01 Attorney General; actions relating to boundary lines; duty.**

The Attorney General shall commence, prosecute, or defend all actions relating to Nebraska's boundary line which affect the rights and interests of Nebraska landowners whose land is being taxed by Nebraska political subdivisions on or after September 13, 1997. The Attorney General shall also take any other action that is required in his or her judgment to protect all rights and interests of such landowners.

**Source:** Laws 1997, LB 588, § 1.

**84-206.02 Repealed. Laws 1957, c. 220, § 4.**

**84-206.03 Repealed. Laws 1959, c. 266, § 1.**

**84-206.04 Repealed. Laws 1967, c. 402, § 1.****84-207 Attorney General; actions involving use of waters of interstate streams; duty.**

It shall be the duty of the Attorney General of the state to commence, prosecute and defend any and all actions affecting the rights of Nebraska water users in interstate streams as against appropriators in any other state, and to take such steps as in his judgment are required to protect any and all interests of appropriators of water within this state in such cases.

**Source:** Laws 1915, c. 223, § 1, p. 492; C.S.1922, § 4841; C.S.1929, § 84-208.

Attorney General was authorized to maintain action to compel irrigation district to refrain from using water for irrigation purposes without complying with statute regulating same. State ex rel. Sorensen v. Mitchell Irrigation District, 129 Neb. 586, 262 N.W. 543 (1935).

**84-208 Attorney General; actions involving use of waters in interstate streams; special counsel; expense.**

The Attorney General is authorized to employ such assistance and incur such expenses as shall be necessary in any such actions.

**Source:** Laws 1915, c. 223, § 2, p. 492; C.S.1922, §§ 4842, 4843; C.S. 1929, § 84-209.

**84-209 Attorney General; actions against members of Legislature; defense; when authorized.**

It shall be the duty of the Attorney General, when requested by resolution of the Legislature, to appear for, and prosecute or defend any action instituted or now pending in any of the courts of this state against any member of the Legislature for, or on account of, any words spoken, or any act or thing done, in the course of legislative procedure, or with relation to any act, measure, resolution, report, speech or debate, or other matter had or transacted by the Legislature, or in connection therewith.

**Source:** Laws 1935, Spec. Sess., c. 9, § 1, p. 67; C.S.Supp.,1941, § 84-211.

**84-210 Attorney General; actions against members of Legislature; defense when Attorney General disqualified.**

When the nature of the action referred to in section 84-209 is such that the Attorney General is disqualified by law from appearing therein and defending the same, then, in that event, it shall be the duty of the Governor of the state to appoint special counsel to appear and defend such action in like manner as the Attorney General might do, if qualified.

**Source:** Laws 1935, Spec. Sess., c. 9, § 2, p. 68; C.S.Supp.,1941, § 84-212.

**84-211 Attorney General; antitrust division; violations of federal antitrust laws; duties.**

It shall be the duty of the Attorney General to institute and prosecute such proceedings as may be necessary for the State of Nebraska and its political subdivisions when there are violations of state and federal antitrust laws. Such proceedings shall be for the state and its political subdivisions as their interest

may appear, and may be prosecuted in the name of the State of Nebraska. No later than June 30, 1974, the Attorney General shall establish within the Department of Justice an antitrust division to which he shall assign one or more assistants, as the work may require. It shall be the primary duty of such division to enforce the laws against monopolies, illegal trusts and other unlawful combinations in restraint of trade, and it shall investigate complaints of violations of such laws, subject to the availability of appropriations for that purpose. To assist the division, the Attorney General shall have authority to call on all agencies of this state, and the political subdivisions thereof, for such assistance as they may be in a position to provide, including but not limited to the furnishing of records and information relating to transactions entered into by them which the Attorney General believes pertain to his antitrust investigations.

**Source:** Laws 1969, c. 826, § 1, p. 3133; Laws 1974, LB 1028, § 4.

**Cross References**

**Antitrust actions,** see section 59-829.

**84-212 Attorney General; antitrust matters; powers; duties; damages; proof; distribution.**

The Attorney General shall have and retain all his common-law powers with respect to dealing with antitrust matters, and all related statutes of this state shall be deemed to be supplementary to such powers. He shall have authority to bring civil actions in the name of the state against anyone found violating either state or federal antitrust laws, and may recover treble damages in such actions. Such actions may also be brought as *parens patriae* of the citizens of this state with respect to damages personally sustained by such citizens, and he may recover the aggregate damages sustained by the citizens of this state, without separately proving the individual claims of each such citizen. Proof of such damages may be based on statistical sampling methods, the pro rata allocation of excess profits to sales occurring within this state, or such other reasonable system of estimating aggregate damages as the court in its discretion may permit. He shall distribute, allocate, or otherwise pay out of the funds so recovered to each citizen of the state a pro rata portion of the fund attributable to his respective claim for damages, less litigation and administrative costs, and any balance remaining after the payment of such individual claims and the costs of litigation and other administrative costs shall be placed in a fund to be distributed to the common schools of this state.

**Source:** Laws 1974, LB 1028, § 5.

**84-213 Attorney General; antitrust matters; investigation; powers; duties; subpoena.**

Whenever the Attorney General undertakes any investigation contemplated by section 59-828, 84-211, or 84-212, he or she shall have the authority, prior to commencement of any action, to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records, writings, or tangible things referred to in this section as documentary material, which he or she deems relevant or material to the investigation, for inspection, reproducing, or copying under such terms and conditions as are set forth in this section. Any subpoena issued by the Attorney General shall contain the following information: (1) The section of the statutes the alleged violation

of which is under investigation and the general subject matter of the investigation; (2) the date and place at which time the person is required to appear or produce documentary material in his or her possession, custody, or control, which date shall not be less than ten days from the date of service of the subpoena; and (3) a description of any documentary material required by class so as to clearly indicate the material demanded. He or she may require the production of documentary material prior to the taking of any testimony of the person subpoenaed, in which event the documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served or at such other time and place as may be agreed upon by the person served and the Attorney General. When documentary material is demanded by subpoena, the subpoena shall not contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state or require the disclosure of any documentary material which would be privileged or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state. Service of such subpoena shall be in the same manner as subpoenas issued by a court in this state, and service on a corporation may be made on its resident agent. The examination of all witnesses under this section shall be conducted by the Attorney General or by an assistant or special assistant attorney general designated by him or her in writing, and the testimony shall be taken stenographically or by a sound-recording device and shall be transcribed. All persons served with a subpoena by the Attorney General under sections 59-828 and 84-211 to 84-214 shall be paid the same fees as paid witnesses in the courts of this state and mileage as provided in section 81-1176 for state employees, which shall be paid the same as other requests for payment or reimbursement from the state at the time such person appears in response to the subpoena. If a witness served with a subpoena under such sections fails or refuses to obey the same or produce documentary material as required or to give testimony relevant or material to the investigation being conducted, the Attorney General may petition the district court of Lancaster County or the county in which the witness resides for an order requiring the witness to attend and testify or produce the documentary material demanded. Any failure or refusal on the part of the witness to obey such an order of court may be punishable by the court as a contempt thereof. In any investigation brought by the Attorney General pursuant to section 59-828, 84-211, or 84-212, no individual shall be excused from attending, testifying, or producing documentary material, objects, or tangible things in obedience to a subpoena or under order of the court on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to any criminal penalty for or on account of any testimony given by him or her in any investigation brought by the Attorney General pursuant to such sections. No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under such sections, and no individual so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

**Source:** Laws 1974, LB 1028, § 6; Laws 1981, LB 204, § 211; Laws 1988, LB 864, § 66.

**84-214 Antitrust matters; labor of human beings; exempt.**

Anything in sections 59-821, 59-828, 59-829, and 84-211 to 84-214 to the contrary notwithstanding the labor of human beings shall not be construed to be an article of commerce or commodity of business and shall be exempt from the provisions of sections 59-821, 59-828, 59-829, and 84-211 to 84-214.

**Source:** Laws 1974, LB 1028, § 7.

**84-215 Act of Legislature; Attorney General opinion, unconstitutional; refusal to implement by state officer; action to determine validity.**

When the Attorney General issues a written opinion that an act of the Legislature is unconstitutional and any state officer charged with the duty of implementing the act, in reliance on such opinion, refuses to implement the act, the Attorney General shall, within ten working days of the issuance of the opinion, file an action in the appropriate court to determine the validity of the act. In any such action filed under the provisions of this section, the Attorney General may sue as defendant any person having a litigable interest in the matter or in lieu thereof may sue the Secretary of State. If the Secretary of State is named as defendant, it shall be his duty to defend such action and to support the constitutionality of the act of the Legislature and for such purpose is authorized to employ special counsel. Notwithstanding the provisions of this section, no such action need be brought by the Attorney General if there is pending in any court of the state a legal action for the purpose of testing the constitutionality of the act. Any person having a litigable interest may be joined in the action or may intervene in the action, but shall not be deemed a necessary party in order to determine the validity of the act.

**Source:** Laws 1977, LB 46, § 1.

It is doubtful that a letter from the Attorney General, disapproving proposed rules as beyond the authority of the board proposing them and stating that the authorizing statute is an excessive delegation of legislative authority, is "a written opinion that an act of the Legislature is unconstitutional". Therefore, the board's failure to act even if the failure is in reliance on such a letter, does not fulfill the requirements of this section. State ex rel. Neb. Nurses Assn. v. State Board of Nursing, 205 Neb. 792, 290 N.W.2d 453 (1980).

Mere failure to act because of an opinion letter of the Attorney General does not constitute refusal to act in reliance upon a

written opinion as required by this section. State ex rel. Neb. Nurses Assn. v. State Board of Nursing, 205 Neb. 792, 290 N.W.2d 453 (1980).

When a board fails to promulgate rules required by statute and such failure is the result of an Attorney General's letter disapproving proposed rules as beyond the authority of the board and based upon an excessive delegation of legislative authority, the conditions of this section are not necessarily met. State ex rel. Neb. Nurses Assn. v. State Board of Nursing, 205 Neb. 792, 290 N.W.2d 453 (1980).

**84-216 State agency; failure or refusal to implement statute; action by Attorney General; when; costs.**

When the Attorney General determines, after such investigation as shall be necessary, that any agency of state government charged with the implementation of any act of the Legislature is failing or refusing to implement such act, he shall notify the agency head by letter of such determination. If, within ten working days of the receipt of such letter, it is not established to his satisfaction that steps to implement the act are being expeditiously taken, and there is no valid reason for failing to do so, such as a failure of an appropriation, the Attorney General shall file an action in the appropriate court to compel implementation. In any such action the department head or the agency head shall defend the action. The costs and a reasonable attorney's fee as fixed by the court shall be paid out of the appropriation to the department.

**Source:** Laws 1977, LB 46, § 2.

**84-217 Sections; cumulative to existing remedies.**

Sections 84-215 to 84-217 shall be cumulative to any existing remedies which may exist.

**Source:** Laws 1977, LB 46, § 3.

**84-218 Repealed. Laws 1987, LB 573, § 4.**

**84-219 Department of Justice Revolving Fund; created; use; investment.**

There is hereby created the Department of Justice Revolving Fund. The fund shall be administered by the Attorney General and shall consist of funds received from other governmental agencies for the provision of legal services pursuant to agreements with the Department of Justice. Money in the fund shall be used to pay the salaries and related expenses of department staff pursuant to the terms of such agreements.

Any money in the 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.

**Source:** Laws 1994, LB 1194, § 12; Laws 1995, LB 7, § 144.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**84-220 Repealed. Laws 2006, LB 1061, § 28.**

**84-221 Repealed. Laws 2007, LB 322, § 43.**

**ARTICLE 3**

**AUDITOR OF PUBLIC ACCOUNTS**

**Cross References**

**Constitutional provisions:**

Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.

Salary, see Article IV, section 25, Constitution of Nebraska.

Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

**Audits:**

Administrative Services, Department of, copies of audits, see section 81-1111.

Auditor of Public Accounts, audit by Tax Commissioner, see section 81-106.

Charitable Gaming Investigation Petty Cash Fund, see section 9-1,105.

Counties under township organization, see section 23-252.

County officers, see sections 23-1608 to 23-1612.

Educational service units, see section 79-1229.

Federal fort restoration boards, see section 72-417.

Immunization records, see section 71-529.

Indian reservations, law enforcement funds, see section 23-362.

Lottery Division of the Department of Revenue, see section 9-809.

Lottery Investigation Petty Cash Fund, see section 9-811.01.

Metropolitan parking authorities, see section 14-1722.

Metropolitan water and utilities districts, see sections 14-2145 to 14-2147.

Motor Fuel Tax Enforcement and Collection Division, see section 66-738.

Motor Vehicle Industry Licensing Fund, Nebraska, see section 60-1409.

Municipal audits, see section 19-2901 et seq.

Public power and irrigation districts, see section 70-623 et seq.

Public records, availability, see section 81-1117.02.

Reclamation districts, see section 46-585 et seq.

Retirement systems, see sections 23-2313, 24-704, 79-909, 79-987, 81-2023, and 84-1315.

Revenue, Department of:

Cigarette tax stamps, see section 77-2608.

Income tax returns, see sections 77-27,119.

State Highway Commission, see section 39-2204.

**Bond, official**, see section 11-119.

**Bonds, registration, certification:**

Bridges, boundary, see section 39-841.

Community colleges, revenue bonds, see section 85-1522.

County horseracing facilities, see section 23-389.

## STATE OFFICERS

Duties, generally, see Chapter 10.  
Highways, see section 39-2207.  
Hospital districts, see sections 23-3561 to 23-3563 and 23-35,116.  
Industrial development, see section 13-1103.  
Irrigation, see sections 46-1,106 and 46-270.  
Libraries, cities of the second class and villages, see section 17-968.  
Metropolitan parking authorities, see section 14-1717.  
Public Funds Deposit Security Act, see section 77-2386.  
Sanitary and improvement districts, see sections 31-727 and 31-759.  
Sanitary drainage districts, see section 31-531.  
Special road improvement districts, see section 39-1632.  
**Budget Act, Nebraska**, see section 13-501.  
**Campaign Finance Limitation Act**, see section 32-1601.  
**Canvassers, board of state**, member, see section 32-1037.  
**Charitable homes**, records, inspection, see section 21-614.  
**County budget**, advisory functions, see section 23-905.  
**County inventory statements**, see section 23-346.  
**Deputy**, see sections 84-801 and 84-803.  
**Election**, see section 32-507.  
**Expenses**, see sections 81-1174 to 81-1177.  
**Funds**, establishment of petty cash, see section 81-104.01.  
**Impeachment**, see section 24-101.  
**Investigation Petty Cash Fund**, see section 81-2004.03.  
**New township or municipal names**, duties, see section 23-281.  
**Political Accountability and Disclosure Act, Nebraska**, see section 49-1401.  
**Records**, delivery to successor, see section 84-604.  
**Salary**, see sections 84-721 and 84-723.  
**State Funds Investment Act, Nebraska**, postaudits, see section 72-1255.  
**State Records Board**, see section 84-1204.  
**State Treasurer**, examination of records of, see section 84-605.  
**Suggestion Award Board**, member, see section 81-1348.  
**Vacancy**, possession and control of office, see section 32-563.

### Section

84-301. Repealed. Laws 2000, LB 692, § 13.  
84-302. Transferred to section 81-1107.01.  
84-303. Transferred to section 81-1125.01.  
84-304. Auditor; powers and duties; assistant deputies; qualifications; duties.  
84-304.01. Auditor; audit, financial, or accounting reports; minimum standards; establish.  
84-304.02. Auditor; audit, financial, or accounting reports; written review; copies; disposition.  
84-304.03. Auditor; establish minimum standards.  
84-305. Public entity; access to records; nonpublic information shall not be made public.  
84-306. Transferred to section 81-1170.  
84-306.01. Transferred to section 81-1174.  
84-306.02. Transferred to section 81-1175.  
84-306.03. Transferred to section 81-1176.  
84-306.04. Transferred to section 81-1171.  
84-306.05. Transferred to section 81-1177.  
84-306.06. Transferred to section 81-1178.  
84-306.07. Transferred to section 81-1179.  
84-306.08. Transferred to section 81-1180.  
84-306.09. Transferred to section 81-1181.  
84-307. Transferred to section 81-1107.02.  
84-308. Transferred to section 81-1107.03.  
84-309. Transferred to section 81-1172.  
84-310. Transferred to section 81-1173.  
84-311. Reports and working papers; disclosure status; penalty.  
84-312. Auditor; oath; power to administer.  
84-313. Transferred to section 81-1107.04.  
84-314. Auditor; deputy; bond or insurance; compensation; duties; qualifications.  
84-314.01. Repealed. Laws 1959, c. 266, § 1.  
84-314.02. Repealed. Laws 1959, c. 266, § 1.  
84-315. Auditor; seal; evidentiary effect.  
84-316. Repealed. Laws 1986, LB 748, § 1.  
84-317. Repealed. Laws 1986, LB 748, § 1.

Section	
84-318.	Repealed. Laws 1986, LB 748, § 1.
84-319.	Repealed. Laws 1986, LB 748, § 1.
84-320.	Repealed. Laws 1986, LB 748, § 1.
84-321.	Auditor of Public Accounts Cash Fund; created; use.
84-322.	Performance audits; authorized.

**84-301 Repealed. Laws 2000, LB 692, § 13.**

**84-302 Transferred to section 81-1107.01.**

**84-303 Transferred to section 81-1125.01.**

**84-304 Auditor; powers and duties; assistant deputies; qualifications; duties.**

It shall be the duty of the Auditor of Public Accounts:

(1) To give information in writing to the Legislature, whenever required, upon any subject relating to the fiscal affairs of the state or with regard to any duty of his or her office;

(2) To furnish offices for himself or herself and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of his or her office;

(3) To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons. Such examinations shall be done in accordance with generally accepted government auditing standards for financial audits and attestation engagements set forth in Government Auditing Standards (2007 Revision), published by the Comptroller General of the United States, Government Accountability Office, and except as provided in subdivision (11) of this section, subdivision (16) of section 50-1205, and section 84-322, shall not include performance audits, whether conducted pursuant to attestation engagements or performance audit standards as set forth in Government Auditing Standards (2007 Revision), published by the Comptroller General of the United States, Government Accountability Office;

(4)(a) To examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of any agricultural association formed under Chapter 2, article 20, any county agricultural society, any joint airport authority formed under the Joint Airport Authorities Act, any city or county airport authority, any bridge commission created pursuant to section 39-868, any cemetery district, any development district, any drainage district, any health district, any local public health department as defined in section 71-1626, any historical society, any hospital authority or district, any county hospital, any housing agency as defined in section 71-1575, any irrigation district, any county or municipal library, any community mental health center, any railroad transportation safety district, any rural water district, any township, Wyuka Cemetery, the Educational Service Unit Coordinating Council, any entity created pursuant to the Interlocal Cooperation Act which includes either the participation of the Educational Service Unit Coordinating Council or any

educational service unit, any village, any political subdivision with the authority to levy a property tax or a toll, or any entity created pursuant to the Joint Public Agency Act which has separately levied a property tax based on legal authority for a joint public agency to levy such a tax independent of the public agencies forming such joint public agency.

(b) The Auditor of Public Accounts may waive the audit requirement of subdivision (4)(a) of this section upon the submission by the political subdivision of a written request in a form prescribed by the auditor. The auditor shall notify the political subdivision in writing of the approval or denial of the request for a waiver;

(5) To report promptly to the Governor and the appropriate standing committee of the Legislature the fiscal condition shown by such examinations conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts. In addition, if, in the normal course of conducting an audit in accordance with subdivision (3) of this section, the auditor discovers any potential problems related to the effectiveness, efficiency, or performance of state programs, he or she shall immediately report them in writing to the Legislative Performance Audit Committee which may investigate the issue further, report it to the appropriate standing committee of the Legislature, or both;

(6)(a) To examine or cause to be examined the books, accounts, vouchers, records, and expenditures of a fire protection district. The expense of the examination shall be paid by the political subdivision.

(b) Whenever the expenditures of a fire protection district are one hundred fifty thousand dollars or less per fiscal year, the fire protection district shall be audited no more than once every five years except as directed by the board of directors of the fire protection district or unless the auditor receives a verifiable report from a third party indicating any irregularities or misconduct of officers or employees of the fire protection district, any misappropriation or misuse of public funds or property, or any improper system or method of bookkeeping or condition of accounts of the fire protection district. In the absence of such a report, the auditor may waive the five-year audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver of the five-year audit requirement. Upon approval of the request for waiver of the five-year audit requirement, a new five-year audit period shall begin.

(c) Whenever the expenditures of a fire protection district exceed one hundred fifty thousand dollars in a fiscal year, the auditor may waive the audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver. Upon approval of the request for waiver, a new five-year audit period shall begin for the fire protection district if its expenditures are one hundred fifty thousand dollars or less per fiscal year in subsequent years;

(7) To appoint two assistant deputies (a) whose entire time shall be devoted to the service of the state as directed by the auditor, (b) who shall be certified public accountants with at least five years' experience, (c) who shall be selected without regard to party affiliation or to place of residence at the time of

appointment, (d) who shall promptly report in duplicate to the auditor the fiscal condition shown by each examination, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts, and it shall be the duty of the auditor to file promptly with the Governor a duplicate of such report, and (e) who shall qualify by taking an oath which shall be filed in the office of the Secretary of State;

(8) To conduct audits and related activities for state agencies, political subdivisions of this state, or grantees of federal funds disbursed by a receiving agency on a contractual or other basis for reimbursement to assure proper accounting by all such agencies, political subdivisions, and grantees for funds appropriated by the Legislature and federal funds disbursed by any receiving agency. The auditor may contract with any political subdivision to perform the audit of such political subdivision required by or provided for in section 23-1608 or 79-1229 or this section and charge the political subdivision for conducting the audit. The fees charged by the auditor for conducting audits on a contractual basis shall be in an amount sufficient to pay the cost of the audit. The fees remitted to the auditor for such audits and services shall be deposited in the Auditor of Public Accounts Cash Fund;

(9) To conduct all audits and examinations in a timely manner and in accordance with the standards for audits of governmental organizations, programs, activities, and functions published by the Comptroller General of the United States;

(10) To develop and maintain an annual budget and actual financial information reporting system for political subdivisions that is accessible on-line by the public; and

(11) When authorized, to conduct joint audits with the Legislative Performance Audit Committee as described in section 50-1205.

**Source:** R.S.1866, c. 4, § 4, p. 20; Laws 1907, c. 140, § 1, p. 447; R.S.1913, § 5546; C.S.1922, § 4848; C.S.1929, § 84-304; Laws 1939, c. 28, § 4, p. 142; C.S.Supp.,1941, § 84-304; R.S.1943, § 84-304; Laws 1951, c. 339, § 1, p. 1121; Laws 1953, c. 322, § 2, p. 1065; Laws 1965, c. 538, § 30, p. 1715; Laws 1965, c. 459, § 26, p. 1465; Laws 1967, c. 36, § 8, p. 164; Laws 1974, LB 280, § 3; Laws 1976, LB 759, § 2; Laws 1977, LB 193, § 4; Laws 1979, LB 414, § 5; Laws 1984, LB 473, § 25; Laws 1985, Second Spec. Sess., LB 29, § 5; Laws 1987, LB 183, § 6; Laws 1992, LB 573, § 14; Laws 1993, LB 579, § 4; Laws 1993, LB 516, § 4; Laws 1995, LB 205, § 1; Laws 1995, LB 509, § 1; Laws 1995, LB 572, § 1; Laws 1996, LB 900, § 1069; Laws 1997, LB 250, § 24; Laws 2000, LB 968, § 84; Laws 2000, LB 1304, § 1; Laws 2002, LB 568, § 11; Laws 2003, LB 607, § 20; Laws 2004, LB 1005, § 136; Laws 2004, LB 1118, § 3; Laws 2006, LB 588, § 10; Laws 2007, LB603, § 31; Laws 2008, LB822, § 4.

Effective date July 18, 2008.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Airport Authorities Act**, see section 3-716.

**Joint Public Agency Act**, see section 13-2501.

**Successors, duties relating to**, see section 84-604.

**Tax returns, audited when**, see section 77-27,119.

Duty of Auditor of Public Accounts to audit accounts of holders of public money is primarily to determine that the state has received the public money to which it is entitled. *Campbell v. Douglas County*, 142 Neb. 773, 7 N.W.2d 764 (1943).

Under former law, Auditor of Public Accounts was authorized to issue warrant only when there had been an appropriation for a specific purpose. *Fischer v. Marsh*, 113 Neb. 153, 202 N.W. 422 (1925).

Auditor of Public Accounts should furnish blanks for settlement between State Treasurer and county treasurers. *State v. Ure*, 102 Neb. 648, 168 N.W. 644 (1918).

Under former law, Auditor of Public Accounts could not without specific appropriation, refund money paid into state treasury by mistake. *Providence Washington Ins. Co. v. Weston*, 63 Neb. 764, 89 N.W. 253 (1902).

Officer, under salary fixed by statute, is not accountable to Auditor of Public Accounts for manner in which his duties are discharged. *Cornell v. Irvine*, 56 Neb. 657, 77 N.W. 114 (1898).

County attorney may bring criminal action against officer in default, without direction of Auditor of Public Accounts. *Bartley v. State*, 53 Neb. 310, 73 N.W. 744 (1898).

#### **84-304.01 Auditor; audit, financial, or accounting reports; minimum standards; establish.**

It shall be the duty of the Auditor of Public Accounts to establish, by rule and regulation, minimum standards applicable to all audit, financial, or accounting reports or copies of such reports required to be filed with the Auditor of Public Accounts by any political subdivision of the State of Nebraska. Such minimum standards shall be in accordance with sound accounting principles, in conformity with generally accepted auditing standards and government auditing standards, and designed to bring about uniformity in the content and form of such reports within the same type of political subdivision. Audit reports of any political subdivision required to file such reports with the Auditor of Public Accounts shall be prepared in conformity with generally accepted auditing standards and government auditing standards.

In connection with his or her duties, but at his or her discretion, the Auditor of Public Accounts may conduct performance audits of all political subdivisions receiving more than twenty-five thousand dollars in the audit year in tax funds from the state including all public utilities and all counties, townships, municipalities, cities, villages, districts, authorities, and other public corporations and entities. The performance audits shall be conducted in conformity with generally accepted auditing standards and government auditing standards.

**Source:** Laws 1974, LB 922, § 1; Laws 1993, LB 310, § 15; Laws 1995, LB 509, § 2.

#### **84-304.02 Auditor; audit, financial, or accounting reports; written review; copies; disposition.**

The Auditor of Public Accounts, or a person designated by him or her, shall prepare a written review of all audit, accounting, or financial reports required to be filed by a political subdivision of the state with the Auditor of Public Accounts and cause one copy of such written review to be mailed to the political subdivision involved and one copy to the accountant who prepared the report. Such written review shall specifically set forth wherein the audit, accounting, or financial report fails to comply with the applicable minimum standards and the necessary action to be taken to bring the report into compliance with such standards. The Auditor of Public Accounts may, upon continued failure to comply with such standards, refuse to accept for filing an audit, accounting, or financial report or any future report submitted for filing by any political subdivision.

**Source:** Laws 1974, LB 922, § 2; Laws 1993, LB 310, § 16.

#### **84-304.03 Auditor; establish minimum standards.**

The Auditor of Public Accounts shall establish minimum standards for all persons identified as auditors or who conduct audits of any agency of state government or of any political subdivision. Such standards shall be established to achieve the goal of assuring a proper level of competency in auditing and shall be distributed to all agencies of state government and all political subdivisions. No agency of state government or political subdivision shall employ any person as an auditor who fails to meet such minimum standards.

**Source:** Laws 1979, LB 414, § 6; Laws 1984, LB 932, § 4; Laws 1993, LB 579, § 5; Laws 1995, LB 509, § 3; Laws 2000, LB 692, § 11.

**84-305 Public entity; access to records; nonpublic information shall not be made public.**

The Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be, unless the auditor's access to the records is specifically prohibited or limited by federal or state law. No provisions of state law shall be construed to change the nonpublic nature of the data obtained as a result of the access. When an audit or investigative finding emanates from nonpublic data which is nonpublic pursuant to federal or state law, all the nonpublic information shall not be made public.

**Source:** Laws 1995, LB 509, § 4.

**84-306 Transferred to section 81-1170.**

**84-306.01 Transferred to section 81-1174.**

**84-306.02 Transferred to section 81-1175.**

**84-306.03 Transferred to section 81-1176.**

**84-306.04 Transferred to section 81-1171.**

**84-306.05 Transferred to section 81-1177.**

**84-306.06 Transferred to section 81-1178.**

**84-306.07 Transferred to section 81-1179.**

**84-306.08 Transferred to section 81-1180.**

**84-306.09 Transferred to section 81-1181.**

**84-307 Transferred to section 81-1107.02.**

**84-308 Transferred to section 81-1107.03.**

**84-309 Transferred to section 81-1172.**

**84-310 Transferred to section 81-1173.**

**84-311 Reports and working papers; disclosure status; penalty.**

(1) All final audit reports issued by the Auditor of Public Accounts shall be maintained permanently as a public record in the office of the Auditor of Public Accounts. Working papers and other audit files maintained by the Auditor of Public Accounts are not public records and are exempt from sections 84-712 to 84-712.05. The information contained in working papers and audit files pre-

pared pursuant to a specific audit is not subject to disclosure except to a county attorney or the Attorney General in connection with an investigation made or action taken in the course of the attorney's official duties or to the Legislative Performance Audit Committee in the course of the committee's official duties and pursuant to the requirements of subdivision (16) of section 50-1205 or subdivision (5) of section 84-304. Public entities being audited and the federal agencies that have made grants to public entities being audited shall also have access to the relevant working papers and audit files. For purposes of this subsection, working papers means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit. The Auditor of Public Accounts may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential under this section when in the possession of the Auditor of Public Accounts.

(2) If the Auditor of Public Accounts or any employee of the Auditor of Public Accounts knowingly divulges or makes known in any manner not permitted by law any record, document, or information, the disclosure of which is restricted by law, he or she is subject to the same penalties provided in section 84-712.09.

**Source:** Laws 1995, LB 509, § 5; Laws 2004, LB 902, § 1; Laws 2006, LB 588, § 11.

**84-312 Auditor; oath; power to administer.**

The Auditor of Public Accounts shall have power to administer all oaths or affirmations required by law, in matters pertaining to the duties of his office, and may do and perform all acts or duties authorized to be performed by notaries public by the laws of the state, subject, however, to such restrictions as are provided by law for notaries.

**Source:** R.S.1866, c. 4, § 13, p. 24; R.S.1913, § 5554; C.S.1922, § 4856; C.S.1929, § 84-312.

**84-313 Transferred to section 81-1107.04.**

**84-314 Auditor; deputy; bond or insurance; compensation; duties; qualifications.**

The Auditor of Public Accounts shall have the power to appoint a deputy, who shall give a bond or equivalent commercial insurance policy to the State of Nebraska (1) with good and sufficient surety, (2) in the amount required by section 11-119, (3) to be approved by the Governor, and (4) deposited with the Secretary of State. When so appointed the deputy may do and perform in the absence of the auditor such acts herein authorized and required of the auditor, as the auditor may authorize him or her to do, subject to the same restrictions. The deputy auditor shall receive a salary of such amount as shall be fixed by the Auditor of Public Accounts, to be paid monthly by warrant of the auditor on the State Treasurer. The deputy auditor shall have had not less than five years' experience either as an auditor or in an executive capacity involving responsi-

bility for directing the work of others engaged in governmental accounting or auditing, or both, and in addition shall be a certified public accountant.

**Source:** R.S.1866, c. 4, § 15, p. 24; R.S.1913, § 5556; Laws 1921, c. 107, § 3, p. 379; C.S.1922, § 4858; C.S.1929, § 84-314; R.S.1943, § 84-314; Laws 1945, c. 254, § 1, p. 793; Laws 1947, c. 347, § 1, p. 1093; Laws 1949, c. 308, § 1, p. 1025; Laws 1951, c. 338, § 9, p. 1119; Laws 1953, c. 356, § 1, p. 1133; Laws 1957, c. 393, § 1, p. 1357; Laws 1959, c. 451, § 2, p. 1503; Laws 1963, c. 536, § 1, p. 1681; Laws 1975, LB 377, § 1; Laws 2004, LB 884, § 49.

Cross References

For bond approval provisions, see Chapter 11, article 2.

For other provisions as to deputy auditor of public accounts, see Chapter 84, article 8.

**84-314.01 Repealed. Laws 1959, c. 266, § 1.**

**84-314.02 Repealed. Laws 1959, c. 266, § 1.**

**84-315 Auditor; seal; evidentiary effect.**

The Auditor of Public Accounts shall keep a seal of office for the authentication of all papers, writings and documents required to be certified by him, and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

**Source:** R.S.1866, c. 4, § 16, p. 24; R.S.1913, § 5557; C.S.1922, § 4859; C.S.1929, § 84-315.

Bond history was competent evidence to prove village board proceedings. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

**84-316 Repealed. Laws 1986, LB 748, § 1.**

**84-317 Repealed. Laws 1986, LB 748, § 1.**

**84-318 Repealed. Laws 1986, LB 748, § 1.**

**84-319 Repealed. Laws 1986, LB 748, § 1.**

**84-320 Repealed. Laws 1986, LB 748, § 1.**

**84-321 Auditor of Public Accounts Cash Fund; created; use.**

There is hereby created in the office of the Auditor of Public Accounts a cash fund to be known as the Auditor of Public Accounts Cash Fund. The fund shall be used for payment for services performed by the Auditor of Public Accounts for state agencies, political subdivisions, and grantees of federal funds disbursed by a receiving agency for which he is entitled to reimbursement on a contractual or other basis for such reimbursement.

**Source:** Laws 1972, LB 1283, § 1; Laws 1976, LB 759, § 3.

**84-322 Performance audits; authorized.**

The Auditor of Public Accounts, when expressly authorized by a majority vote of the members of the Legislative Performance Audit Committee, may conduct performance audits of state executive branch offices, state agencies, state bureaus, state boards, state commissions, the state library, societies and associations supported by the state, state institutions, state colleges, and the Universi-

ty of Nebraska. The auditor shall issue the performance audit report to the Governor, the appropriate standing committee of the Legislature, and the Legislative Performance Audit Committee.

**Source:** Laws 2003, LB 607, § 21.

## ARTICLE 4

### BOARD OF EDUCATIONAL LANDS AND FUNDS

#### Cross References

**Constitutional provision:**

Educational Lands and Funds, Board of, see Article VII, section 6, Constitution of Nebraska.

**Duties with respect to:**

Apportionment of school funds, see Chapter 79, article 10.

County resurveys, see section 23-302.

Development of mineral lands, see Chapter 72, article 3.

Geothermal resources, leases authorized, see section 66-1104.

Investment of funds, see sections 77-2204 and 77-2205.

Oil and gas easements, see section 57-1104.

Oil and gas leases of state-owned land, see Chapter 72, article 9.

Public land taken for road purposes, see sections 39-1323 and 39-1703.

Safekeeping of documents conveying lands to state, see section 72-108.

Saline lands, state-owned, see Chapter 72, article 5.

School lands and funds, see sections 72-202 to 72-269.

Shelterbelts on state-owned land, see sections 72-105 to 72-107.

Veterans' Aid Fund, Nebraska, see section 80-401.

**Expenses**, see sections 81-1174 to 81-1177.

**Fees**, see sections 25-1280 and 33-104.

**Impeachment**, see section 24-101.

**Members**, appointment, term, qualifications, compensation, see section 72-201.

**Organization**, chairperson, meetings, see section 72-201.

**Secretary**, appointment, compensation, see section 72-201.

#### Section

- 84-401. Board of Educational Lands and Funds; records of state lands; duty to keep.
- 84-402. Board of Educational Lands and Funds; seal.
- 84-403. Repealed. Laws 1957, c. 394, § 1.
- 84-404. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; receipt.
- 84-405. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; custody.
- 84-406. Board of Educational Lands and Funds; field notes of Surveyor General of the United States; inspection.
- 84-407. State Surveyor; deputy surveyors; duties; compensation.
- 84-407.01. Deputy surveyor; private employment; no additional fees; cost of plat and field notes.
- 84-408. State Surveyor; duties; surveys; prima facie evidence of correctness.
- 84-409. State Surveyor; surveys; fees; amount; disposition; Surveyors' Cash Fund.
- 84-409.01. Applications for surveys; costs advanced; disposition.
- 84-410. State Surveyor; disputed surveys; how settled; prima facie evidence of correctness; compel testimony; oaths.
- 84-411. State Surveyor; entry upon property authorized; damages.
- 84-412. Survey record repository; established.
- 84-413. Survey record repository; duties.
- 84-414. Survey Record Repository Fund; created; use; investment.
- 84-415. Survey record repository; funding; fees.

#### **84-401 Board of Educational Lands and Funds; records of state lands; duty to keep.**

The records appertaining to all public lands of the state shall be kept in the office of the Board of Educational Lands and Funds at the seat of government.

**Source:** Laws 1877, § 4, p. 173; R.S.1913, § 5559; C.S.1922, § 4863; C.S.1929, § 84-402.

## Cross References

Conveyances of real estate, custody after recording, see section 72-108.

**84-402 Board of Educational Lands and Funds; seal.**

The Board of Educational Lands and Funds shall procure a seal with proper devices and the words Nebraska State Land Office included thereon, which seal shall be used by it officially in all matters pertaining to its office wherein a seal is required.

**Source:** Laws 1877, § 3, p. 173; R.S.1913, § 5567; C.S.1922, § 4871; C.S.1929, § 84-410; R.S.1943, § 84-402; Laws 1971, LB 653, § 11.

**84-403 Repealed. Laws 1957, c. 394, § 1.****84-404 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; receipt.**

The Board of Educational Lands and Funds shall, as custodian thereof, receive from the Surveyor General of the United States for the State of Nebraska, or from any other authorized officer or agent of the United States having the care, custody and safekeeping of the same, all the field notes, maps, charts, records, and all other papers appertaining or in any manner connected to or with the land titles within the State of Nebraska, including all surveys of lands within the state made under or by authority of the United States.

**Source:** Laws 1889, c. 84, § 1, p. 567; R.S.1913, § 5560; C.S.1922, § 4864; C.S.1929, § 84-403.

**84-405 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; custody.**

The Board of Educational Lands and Funds, as such custodian, shall provide for and safely keep in its office all the surveys, field notes, maps, charts, records, and all other papers mentioned in section 84-404, the same as other public records are kept in its office.

**Source:** Laws 1889, c. 84, § 3, p. 568; R.S.1913, § 5561; C.S.1922, § 4865; C.S.1929, § 84-404.

**84-406 Board of Educational Lands and Funds; field notes of Surveyor General of the United States; inspection.**

The Commissioner of the General Land Office or any Surveyor General or deputy surveyor general or any agent or authority of the United States, or any county surveyor of Nebraska, shall at all times have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 84-404 and 84-405, the reception and safekeeping of which is herein provided for, and which shall be received from the United States under the authority of any Act of Congress.

**Source:** Laws 1889, c. 84, § 4, p. 568; R.S.1913, § 5562; C.S.1922, § 4866; C.S.1929, § 84-405.

**84-407 State Surveyor; deputy surveyors; duties; compensation.**

(1) The Board of Educational Lands and Funds shall appoint a competent and experienced land surveyor to be known and designated as the State

Surveyor. He or she shall take charge under the supervision of the board of the field notes, maps, charts, and records of the United States surveys and perform such other duties as may be prescribed by the board. He or she shall also provide technical assistance, support, and advice to the various counties, cities, and other governmental bodies in Nebraska in their endeavors to produce and maintain cadastral or other geo-referenced maps.

(2) The board may, when in its judgment there is need of expediting the execution of surveys applied or petitioned for and of expediting the settlement of the disputes referred to in section 84-410, appoint one or more competent experienced deputy land surveyors.

(3) Each of the deputy surveyors shall make such surveys as may be assigned him or her and report his or her work together with all necessary notes and maps to the board. Upon approval of his or her report and accompanying documents by the board, the same shall be used in all respects as though made by the chief State Surveyor. Each deputy appointed under the provisions of this section, except as otherwise provided in section 84-407.01, shall be entitled to compensation as determined by the board and necessary expenses for the time actually engaged in service, to be paid to the State Treasurer by the parties applying for or petitioning for a survey or resurvey, and parties interested in any dispute over surveys or boundaries.

**Source:** Laws 1903, c. 105, § 1, p. 576; Laws 1909, c. 137, § 1, p. 485; R.S.1913, § 5563; Laws 1919, c. 54, § 1, p. 157; C.S.1922, § 4867; C.S.1929, § 84-406; Laws 1941, c. 188, § 1, p. 757; C.S.Supp.,1941, § 84-406; R.S.1943, § 84-407; Laws 1947, c. 348, § 1, p. 1094; Laws 1951, c. 340, § 1, p. 1124; Laws 1953, c. 357, § 1, p. 1134; Laws 1957, c. 395, § 1, p. 1359; Laws 1959, c. 452, § 1, p. 1505; Laws 1965, c. 569, § 1, p. 1857; Laws 1982, LB 127, § 12; Laws 1998, LB 924, § 51.

**84-407.01 Deputy surveyor; private employment; no additional fees; cost of plat and field notes.**

Whenever a survey, as provided by section 84-407, is made by a deputy land surveyor who is in the employ of the party requesting the survey, and who is receiving regular compensation from such party while making such survey, such party shall not be required to pay the fees as specified by section 84-407, but shall pay to the State Treasurer the cost of a certified copy of the plat and field notes which shall be based on a fee schedule to be adopted by the Board of Educational Lands and Funds.

**Source:** Laws 1957, c. 395, § 2, p. 1360.

**84-408 State Surveyor; duties; surveys; prima facie evidence of correctness.**

The Board of Educational Lands and Funds shall refer to the State Surveyor all questions or inquiries relating to surveys, grievances or disputes growing out of conflicting surveys of lands or lots. The surveyor shall issue and prepare the advice, instruction and opinion, and issue the same under the approval of the board. In case a survey is petitioned for, he shall perform that duty and report the same with necessary notes and maps to the board. When such notes and maps are so approved, filed and recorded in the office of the county surveyor of the county in which the survey was had, such survey shall be prima facie evidence of the correctness thereof. It shall be the duty of the county surveyor

to record and file such notes and maps in the county surveyor's records of the county in which the survey is made; *Provided*, any person or persons having an interest in the lands affected by such survey may appeal therefrom in the manner provided by law. The surveyor shall also prepare and issue, under the authority and direction of the board, a circular of instructions to the county surveyors of the state for their direction and guidance in the restoration and establishment of lines and preservation of corners in conformity with the laws, rules and regulations governing the surveys of the United States and established rules of surveying; and for the concise and comprehensive preparation and recording of field notes and maps of surveys. He shall also perform such other duties as the board may require.

**Source:** Laws 1903, c. 105, § 2, p. 576; R.S.1913, § 5564; C.S.1922, § 4868; C.S.1929, § 84-407; R.S.1943, § 84-408; Laws 1951, c. 340, § 2, p. 1125.

Retracement survey made by deputy state surveyor was prima facie evidence only of correctness thereof. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

**84-409 State Surveyor; surveys; fees; amount; disposition; Surveyors' Cash Fund.**

There shall be paid to the State Treasurer, for each day the State Surveyor is engaged in making any survey or in settling and disposing of disputes and disagreements, as provided in section 84-410, a per diem rate of compensation as determined by the Board of Educational Lands and Funds for his or her services and the necessary expenses incurred in making the same. All fees received for the services and expenses of the State Surveyor or deputy surveyors shall be paid into the state treasury and by the State Treasurer placed in a fund to be known as Surveyors' Cash Fund, which fund shall be used in paying the salaries and expenses of deputy surveyors, except as provided in section 84-407.01, in making surveys and for making refunds on deposits. All fees and expenses placed in the Surveyors' Cash Fund for the services and expenses of the State Surveyor, after the payments from the cash fund are made as hereinbefore provided, shall be transferred to the General Fund.

**Source:** Laws 1903, c. 195, § 3, p. 577; R.S.1913, § 5565; Laws 1919, c. 54, § 1, p. 158; C.S.1922, § 4869; C.S.1929, § 84-408; R.S. 1943, § 84-409; Laws 1947, c. 348, § 2, p. 1095; Laws 1951, c. 340, § 3, p. 1126; Laws 1953, c. 357, § 2, p. 1135; Laws 1957, c. 395, § 3, p. 1360; Laws 1959, c. 452, § 2, p. 1506; Laws 1965, c. 569, § 2, p. 1858; Laws 1982, LB 127, § 13.

**84-409.01 Applications for surveys; costs advanced; disposition.**

There shall accompany all applications for surveys, except those from political subdivisions, a sum sufficient to defray the cost of making such surveys as provided by sections 84-407, 84-407.01, and 84-409, and such advance deposits shall be held in the cash fund until the surveys are made.

**Source:** Laws 1957, c. 395, § 4, p. 1360.

**84-410 State Surveyor; disputed surveys; how settled; prima facie evidence of correctness; compel testimony; oaths.**

In case of any dispute among owners of and arising for or by reason of any survey of boundaries of lands within this state, or in case of dispute or disagreement between surveyors as to said surveys or boundaries, the same shall be referred to the State Surveyor for settlement. He is hereby appointed as arbitrator to settle and determine such disputes or disagreements as to said surveys and boundaries and his decision shall be prima facie evidence of the correctness thereof. In making such surveys, the State Surveyor and deputies shall each have power in any county of the State of Nebraska to summon and compel the attendance of witnesses before them to testify as to material facts relating to their knowledge of lost or obliterated corners. The State Surveyor and deputies are authorized and empowered to administer oaths and affirmations to their assistants and to witnesses.

**Source:** Laws 1903, c. 195, § 4, p. 577; Laws 1913, c. 44, § 1, p. 148; R.S.1913, § 5566; Laws 1919, c. 54, § 1, p. 158; C.S.1922, § 4870; C.S.1929, § 84-409; R.S.1943, § 84-410; Laws 1947, c. 348, § 3, p. 1095; Laws 1951, c. 340, § 4, p. 1126.

Statute is permissive and not mandatory. Ejectment may be maintained against occupant by one excluded from land without submitting controversy to State Surveyor under this section. *Whitney v. Wyatt*, 111 Neb. 328, 196 N.W. 322 (1923); *Reed v. Wellman*, 110 Neb. 166, 193 N.W. 261 (1923).

Prima facie case made by survey and report of deputy state surveyor was overcome by evidence of location of original

government corner at variance with survey. *McShane v. Murray*, 106 Neb. 512, 184 N.W. 147 (1921).

Instructions given by trial court as to effect of resurvey made by deputy surveyor were in harmony with the provisions of the statute. *Harris v. Harms*, 105 Neb. 375, 181 N.W. 158 (1920).

#### **84-411 State Surveyor; entry upon property authorized; damages.**

The State Surveyor and deputy surveyors in the official performance of their duties shall have authority to enter upon any property to make surveys. Entry upon any property, pursuant to this section, shall not be considered to be legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the owner of the premises shall be paid an amount equal to the damages.

**Source:** Laws 1982, LB 127, § 14.

#### **84-412 Survey record repository; established.**

The State Surveyor shall establish a survey record repository in the city of Lincoln. The State Surveyor shall employ all individuals necessary to staff such repository and may, with the approval of the Board of Educational Lands and Funds, set the salaries of such employees.

**Source:** Laws 1982, LB 127, § 15.

#### **84-413 Survey record repository; duties.**

The survey record repository shall:

(1) Microfilm, index, and file the surveying records of all surveys completed after July 17, 1982, which are filed pursuant to sections 81-8,121 to 81-8,122.01;

(2) Provide a copy of survey records to the county in which the survey was conducted. Such copy shall be transmitted to the county within thirty days of its receipt by the repository and at no cost to the county;

(3) As funds become available from the fees collected pursuant to this section, and at no cost to the counties, request records of all surveys completed prior to

July 17, 1982, from the counties and incorporate such records into the repository's files;

(4) Collect a fee not to exceed five dollars for each survey of a subdivision or a survey which makes reference to an original government corner and collect a fee not to exceed two dollars and fifty cents for all other surveys filed with the repository by a surveyor, except that no fee shall be charged for filing surveys pursuant to section 23-1911 when the work is requested by the county and when no fees for the survey are received by the surveyor or the county from any other persons;

(5) Collect a fee not to exceed ten dollars for each search of the repository's files required by any person;

(6) Charge a fee for the reproduction of material equal to the cost of such reproduction; and

(7) Provide information to any person upon request and payment of the appropriate fee.

**Source:** Laws 1982, LB 127, § 16.

#### **84-414 Survey Record Repository Fund; created; use; investment.**

The State Surveyor, under the direction of the Board of Educational Lands and Funds, shall receive and account for all money derived from the operation of the survey record repository pursuant to sections 84-412 and 84-413, and shall pay such money to the State Treasurer, who shall credit it to the Survey Record Repository Fund which is hereby created. When appropriated by the Legislature, this fund shall be expended only for the purposes of sections 84-412 and 84-413. All money in the 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.

**Source:** Laws 1982, LB 127, § 17; Laws 1995, LB 7, § 146.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **84-415 Survey record repository; funding; fees.**

No expense for developing or maintaining the survey record repository shall be paid for by funds from the General Fund. The fees for records, searches, and other services related to the repository's files shall be set so that all costs of the survey record repository are paid by the persons requesting such records, searches, or other services.

**Source:** Laws 1982, LB 127, § 18.

### **ARTICLE 5**

#### **SECRETARY OF STATE**

#### **Cross References**

#### **Constitutional provisions:**

Election, term, eligibility, see Article IV, section 1, Constitution of Nebraska.

Great Seal, keeper of, see Article IV, section 24, Constitution of Nebraska.

Initiative and referendum, duties relating to, see Article III, sections 2 to 4, Constitution of Nebraska.

Parole and pardons, see Article IV, section 13, Constitution of Nebraska.

Salary, see Article IV, section 25, Constitution of Nebraska.

Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.

#### **Boards, commissions, and committees:**

**§ 84-501**

**STATE OFFICERS**

Accountability and Disclosure Commission, Nebraska, member and duties, see section 49-14,105.  
Board of state canvassers, member, see section 32-1037.  
Brand Committee, Nebraska, member and chairperson, see section 54-191.  
Pardons, Board of, member, see section 83-1,126.  
State Real Estate Commission, member and chairperson, see section 81-885.07.

**County officers**, maintain current list of, see section 23-1306.

**Duties with respect to:**

Agricultural associations, see Chapter 2, article 20.  
Beverage containers, identifying marks or devices, see section 28-1330.  
Constitutional amendments, adoption of, see sections 49-201 to 49-211.  
Constitutional conventions, see sections 49-212 to 49-234.  
Corporations, see Chapter 21.  
Depositories of state funds, bond approval, see section 77-2303.  
Elections, see Chapter 32.  
Formation of new counties, see section 22-202.  
Judicial nominating commissions, see Chapter 24, article 8.  
Legislature, special sessions, convening, see section 50-125.  
Liens, see Chapter 52 and Chapter 54, article 2.  
Limited partnerships, see Chapter 67, article 2.  
Livestock brands, see Chapter 54, article 1.  
Livestock markets, see Chapter 54, article 11.  
Municipal Cooperative Financing Act, see section 18-2422 et seq.  
Natural resources district officers, bond approval, see section 2-3217.  
Notaries public, see Chapter 64.  
Official bonds and oaths, see Chapter 11, article 1.  
Partnerships, see Chapter 67, article 4.  
Private detectives, see Chapter 71, article 32.  
Public power district directors, bond approval, see section 70-620.  
Reclamation district directors, bond approval, see section 46-535.  
Rules of agencies, see Chapter 84, article 9.  
Session laws and journals, distribution, see Chapter 49, article 5.  
State Records Administrator, designated as, see section 84-1203.  
Taxes:  
    Cigarettes, see section 77-2609.  
    Occupation taxes, corporations, see Chapter 21, article 3.  
    State tax lien registration and enforcement, see Chapter 77, article 39.  
Telegraph companies, see section 86-603.  
Trademarks and trade names, see Chapter 87, articles 1 and 2.  
Uniform Commercial Code, see Article 9, part 5.

**Election**, see section 32-507.

**Expenses**, see sections 81-1174 to 81-1177.

**Fees**, generally, see sections 25-1280, 33-101, and 33-102.

**Impeachment**, see section 24-101.

**Salary**, see sections 84-721 and 84-723.

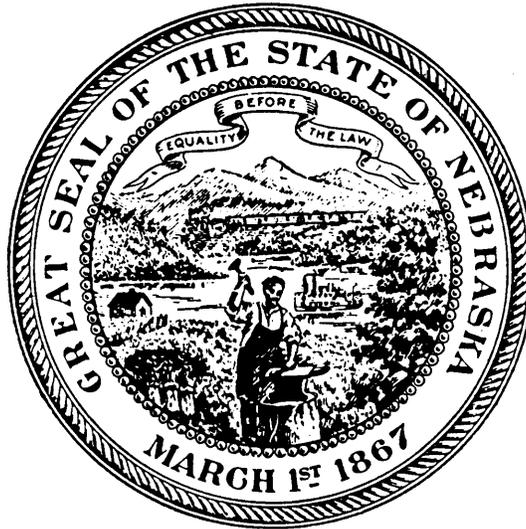
**Vacancy**, possession and control of office, see section 32-563.

**Section**

- 84-501. Secretary of State; Great Seal; custodian.
- 84-502. Secretary of State; duties.
- 84-503. Secretary of State; bills passed over Governor’s veto; authentication.
- 84-504. Secretary of State; bills not signed or returned to Legislature by Governor; authentication.
- 84-505. Secretary of State; laws, acts, resolutions, bonds, insurance policies, records; custodian; transfer.
- 84-506. Repealed. Laws 1971, LB 36, § 8.
- 84-507. Secretary of State; oaths; acknowledgments; fees.
- 84-508. Secretary of State; deputy; duties.
- 84-509. Secretary of State; deputy; compensation.
- 84-509.01. Restriction on political committee participation.
- 84-509.02. Repealed. Laws 1959, c. 266, § 1.
- 84-510. Corporation Cash Fund; created; use; investment.

**84-501 Secretary of State; Great Seal; custodian.**

The Secretary of State shall safely keep and not suffer to be imitated or counterfeited the Great Seal of the State of Nebraska of the form and design prescribed by the Act approved June 15, 1867, as follows:



**Source:** Laws 1867, § 1, p. 57; R.S.1913, § 5569; C.S.1922, § 4873; C.S.1929, § 84-501.

**Note:** Section 1 of the act of 1867 is as follows: "Section 1. **Be it enacted by the Legislature of the State of Nebraska,** That the Secretary of State be, and he is hereby authorized and required to procure, at the cost and expense of the state, and as soon after the passage of this act as practicable, a seal for the state, to be designated and known as the Great Seal of the State of Nebraska, and of the design and device following, that is to say: The eastern part of the circle to be represented by a steamboat ascending the Missouri river; the mechanic arts to be represented by a smith with hammer and anvil; in the foreground, agriculture to be represented by a settler's cabin, sheaves of wheat and stalks of growing corn; in the background a train of cars heading towards the Rocky Mountains, and on the extreme west, the Rocky Mountains to be plainly in view; around the top of this circle to be in capital letters, the motto, 'EQUALITY BEFORE THE LAW,' and the circle to be surrounded with the words, 'Great Seal of the State of Nebraska, March 1st, 1867.'"

#### **84-502 Secretary of State; duties.**

It shall be the duty of the Secretary of State:

- (1) To countersign and affix the seal of the state to all commissions required by law to be issued by the Governor;
- (2) To keep a register of all such commissions specifying the person to whom granted, the office conferred, the date of signing the commission, and, when bond or an equivalent commercial insurance policy is taken, the date and amount thereof and the names of the sureties;
- (3) To make and keep proper indexes to the records and all public acts, resolutions, papers, and documents in his or her office;
- (4) To give any person requiring the same, and paying the lawful fees therefor, a copy of any law, act, resolution, record, or paper in his or her office, and attach thereto his or her certificate under the seal of the state;
- (5) To distribute the laws and journals as authorized by section 49-501 and keep an account thereof; and
- (6)(a) To act as the chief protocol officer of the State of Nebraska;
- (b) In coordination with the Governor, the Department of Economic Development, the Department of Agriculture, and other interested federal, state, and local officials, to actively seek appropriate contacts with other officials in nations with which the state has or desires to have active trade, cultural, or educational relations; and

(c) To help facilitate the interchange of ideas and contacts for betterment of commerce, cultural exchange, or educational studies between such nations and the state.

**Source:** Laws 1877, § 6, p. 162; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502; R.S.1943, § 84-502; Laws 1969, c. 831, § 2, p. 3154; Laws 1981, LB 545, § 48; Laws 1996, LB 895, § 1; Laws 2003, LB 430, § 1; Laws 2004, LB 884, § 50.

**84-503 Secretary of State; bills passed over Governor's veto; authentication.**

Whenever any bill which shall have passed the Legislature shall be returned by the Governor with his objections thereto, and upon reconsideration shall pass the Legislature by the constitutional majority, it shall be authenticated as having become a law by a certificate thereon to the following effect: This bill having been returned by the Governor, with his objections thereto, and, after reconsideration, having passed the Legislature by the constitutional majority, it has become a law this ..... day of ....., A.D., ....., which, being signed by the presiding officer of the Legislature, shall be deemed a sufficient authentication thereof, and the bill shall thereupon be deposited with the laws in the office of the Secretary of State.

**Source:** Laws 1877, § 6, p. 196; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502.

**84-504 Secretary of State; bills not signed or returned to Legislature by Governor; authentication.**

Whenever any bill which shall have passed the Legislature and shall not be returned by the Governor or filed with his objections in the office of the Secretary of State, as required by Article IV, section 15, Constitution of Nebraska, it shall be the duty of the Secretary of State to authenticate the same by a certificate thereon to the following effect, as the case may be: This bill having remained with the Governor five days, Sunday excepted, the Legislature being in session, the Governor having failed to return this bill to the Legislature during its session, and having failed to file it in my office with his objections within five days after adjournment of the Legislature, it has thereby become a law.

Witness my hand this ..... day of ....., A.D., .....

**Source:** Laws 1877, § 6, p. 196; R.S.1913, § 5570; C.S.1922, § 4874; C.S.1929, § 84-502; Laws 1939, c. 136, § 1, p. 582; C.S.Supp.,1941, § 84-502.

**84-505 Secretary of State; laws, acts, resolutions, bonds, insurance policies, records; custodian; transfer.**

All public acts, laws, and resolutions passed by the Legislature of the state shall be carefully deposited in the office of the Secretary of State, and the secretary is charged with the safekeeping of such office and all laws, acts, resolutions, bonds or equivalent commercial insurance policies, papers, and records which are or shall be deposited therein. Such records may be transferred to the State Archives of the Nebraska State Historical Society or other

suitable records storage facility, when authorization is given by the State Records Administrator pursuant to the Records Management Act.

**Source:** Laws 1877, § 3, p. 195; R.S.1913, § 5571; C.S.1922, § 4875; C.S.1929, § 84-503; R.S.1943, § 84-505; Laws 1973, LB 224, § 14; Laws 2004, LB 884, § 51.

**Cross References**

**Records Management Act**, see section 84-1220.

Enrolled bills must be filed with Secretary of State, and, with the journal of the Legislature, are the only competent evidence of due passage of bills. *State v. Abbott*, 59 Neb. 106, 80 N.W. 499 (1899).

**84-506 Repealed. Laws 1971, LB 36, § 8.**

**84-507 Secretary of State; oaths; acknowledgments; fees.**

The Secretary of State shall have power to administer oaths and affirmations, acknowledgments and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing to be used or recorded in this state. He shall be allowed such fee as is provided for a notary public in such cases made and provided.

**Source:** Laws 1877, § 9, p. 199; R.S.1913, § 5573; C.S.1922, § 4877; C.S.1929, § 84-505.

**84-508 Secretary of State; deputy; duties.**

The Secretary of State shall have power to appoint a deputy, and, when so appointed, the deputy shall do and perform, in case of the absence or disability of the secretary, all the duties herein authorized and required of the secretary, and the secretary shall be responsible for all the official acts of his deputy.

**Source:** Laws 1877, § 7, p. 199; R.S.1913, § 5574; C.S.1922, § 4878; C.S.1929, § 84-506.

**84-509 Secretary of State; deputy; compensation.**

The deputy secretary of state shall receive a salary of such amount as shall be fixed by the Secretary of State, to be paid monthly by warrant of the Director of Administrative Services on the State Treasurer.

**Source:** Laws 1877, § 8, p. 199; Laws 1909, c. 124, § 1, p. 465; R.S. 1913, § 5575; Laws 1921, c. 107, § 6, p. 380; C.S.1922, § 4879; C.S.1929, § 84-507; R.S.1943, § 84-509; Laws 1945, c. 254, § 2, p. 793; Laws 1947, c. 347, § 2, p. 1093; Laws 1951, c. 338, § 10, p. 1120; Laws 1955, c. 349, § 1, p. 1068; Laws 1957, c. 396, § 1, p. 1361; Laws 1959, c. 451, § 3, p. 1504; Laws 1963, c. 536, § 2, p. 1682.

**84-509.01 Restriction on political committee participation.**

The Secretary of State shall not be a member or officer of a committee as defined in section 49-1413 other than a committee formed for his or her own candidacy.

**Source:** Laws 2006, LB 940, § 4.

**84-509.02 Repealed. Laws 1959, c. 266, § 1.**

**84-510 Corporation Cash Fund; created; use; investment.**

The Corporation Cash Fund is created. Transfers from the fund to the Election Administration Fund may be made at the direction of the Legislature. Within five days after April 3, 2008, the State Treasurer shall transfer thirty-five thousand seven hundred ninety-five dollars from the Corporation Cash Fund to the Election Administration Fund. Any money in the Corporation 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.

**Source:** Laws 2003, LB 357, § 9; Laws 2008, LB961, § 7.  
Operative date April 3, 2008.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.  
**Nebraska State Funds Investment Act**, see section 72-1260.

**ARTICLE 6**

**STATE TREASURER**

**Cross References**

**Constitutional provisions:**

- Election, term, eligibility, see Article IV, sections 1 and 3, Constitution of Nebraska.
- Salary, see Article IV, section 25, Constitution of Nebraska.
- Term of office, begins when, see Article XVII, section 5, Constitution of Nebraska.
- Treasury withdrawals, none without specific appropriation, see Article III, section 25, Constitution of Nebraska.
- Agricultural extension service**, federal aid, acceptance authorized, see sections 85-150 and 85-151.
- Bessey Memorial Fund**, custodian, see section 85-170.
- Board of Trustees of the Nebraska State Colleges**, treasurer, see section 85-302.
- Canvassers, board of state**, member, see section 32-1037.
- Deposit and investment of public funds**, duties, see Chapter 72, article 12, and Chapter 77, article 23.
- Election**, see section 32-507.
- Expenses**, see sections 81-1174 to 81-1177.
- Fiscal agent of state**, see section 10-101.
- Impeachment**, see section 24-101.
- Investment Council, Nebraska**, member, see section 72-1237.
- Liquor**, license fees credited to school fund, see section 53-138.01.
- Retirement systems**, custodian of funds and securities, see sections 23-2310.03, 24-713, 79-908, 81-2020, 84-1309, and 84-1505.
- Salary**, see sections 84-721 and 84-723.
- School funds**, apportionment of, see Chapter 79, article 10.
- School lands**, custody of bonds, see section 72-202.
- Severance tax proceeds**, disposition of, see section 57-705.
- Social security**, disability funds, custodian, see section 79-11,131.
- State agencies and officers**, remit money to State Treasurer, see section 84-710 et seq.
- Unclaimed money and property**, duties, see sections 24-345 and 69-1301 et seq.
- University of Nebraska**, treasurer and custodian of funds, see sections 85-128, 85-129, 85-192, and 85-1,123.
- Vacancy**, possession and control of office, see section 32-563.
- Veterans' Aid Fund, Nebraska**, custodian, see section 80-401.
- Vocational education**, custodian of funds, see section 79-739.
- Vocational rehabilitation**, custodian of funds, see section 79-11,125.
- Warrants**, duties relating to, see Chapter 77, article 22.
- Workers' Compensation Trust Fund**, custodian, see section 48-162.02.

**Section**

- 84-601. State Treasurer; residence office; location.
- 84-602. State Treasurer; duties.
- 84-603. State Treasurer; seal authentication; copies evidence of original.
- 84-604. State Treasurer and Auditor of Public Accounts; records; delivery to successors.
- 84-605. State Treasurer; records; inspection by Legislature; audit.
- 84-606. State Treasurer; oaths; power to administer.
- 84-607. State Treasurer; refusal to pay lawful warrant; penalty.
- 84-608. State Treasurer; deputy; duties; compensation.

Section	
84-608.01.	Repealed. Laws 1957, c. 397, § 5.
84-608.02.	Repealed. Laws 1961, c. 286, § 1.
84-609.	Repealed. Laws 1987, LB 15, § 1.
84-610.	Repealed. Laws 1987, LB 15, § 1.
84-611.	Repealed. Laws 1987, LB 15, § 1.
84-612.	Cash Reserve Fund; created; transfers; receipt of federal funds.
84-613.	Cash Reserve Fund; investment; interest; disposition.
84-614.	Unreversed transfer; considered encumbrance; when.
84-615.	Petty cash fund; authorized.
84-616.	Judgments and security for debt; authority of State Treasurer to sell and assign.
84-617.	State Treasurer Administrative Fund; created; use; investment; fee schedule.
84-617.01.	Returned check or electronic payment not accepted; State Treasurer; state agency; assessment of charge; limitation.
84-618.	Treasury Management Cash Fund; created; use; investment.
84-619.	Repealed. Laws 2006, LB 1061, § 29.
84-620.	State Treasurer; debtor of state agency; fees authorized; payment limitations.

**84-601 State Treasurer; residence office; location.**

The State Treasurer shall reside and keep his office at the seat of government.

**Source:** R.S.1866, c. 4, § 17, p. 24; R.S.1913, § 5576; C.S.1922, § 4880; C.S.1929, § 84-601.

**84-602 State Treasurer; duties.**

It shall be the duty of the State Treasurer:

- (1) To receive and keep all money of the state not expressly required to be received and kept by some other person;
- (2) To disburse the public money upon warrants drawn upon the state treasury according to law, and not otherwise;
- (3) To keep a just, true and comprehensive account of all money received and disbursed;
- (4) To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them;
- (5) To render a full statement to the Department of Administrative Services, of all money received by him from whatever source, and if on account of revenue, for what year; of all penalties and interest on delinquent taxes reported or accounted for to him, and of all disbursements of public funds; with a list, in numerical order, of all warrants redeemed, the name of the payee, amount, interest and total amount allowed thereon, and with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June and September, and more often if required;
- (6) To report to the Legislature as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding fiscal year;
- (7) To give information in writing to the Legislature, whenever required, upon any subject connected with the treasury or touching any duty of his office; and

(8) To account for, and pay over, all money received by him as such treasurer, to his successor in office, and deliver all books, vouchers and effects of office to him; and such successor shall receipt therefor. In accounting for and paying over such money the treasurer shall not be held liable on account of any loss occasioned by any investment, when such investment shall have been made pursuant to the direction of the state investment officer.

**Source:** R.S.1866, c. 4, § 18, p. 24; R.S.1913, § 5577; C.S.1922, § 4881; C.S.1929, § 84-602; R.S.1943, § 84-602; Laws 1967, c. 617, § 1, p. 2069; Laws 1970, Spec. Sess., c. 3, § 1, p. 67.

State Treasurer was necessary party to declaratory judgment action testing constitutionality of statute. *Haynes v. Anderson*, 163 Neb. 50, 77 N.W.2d 674 (1956).

State Treasurer is required to keep a warrant register for registration of unpaid warrants and warrants should be paid in order of their presentation. *State v. Omaha National Bank*, 66 Neb. 857, 93 N.W. 319 (1903).

Appropriation, authorizing State Treasurer to reimburse sinking fund from General Fund, is command to make proper entries on books, and issuance of warrant to him therefor is

void. *State v. Omaha Nat. Bank*, 59 Neb. 483, 81 N.W. 319 (1899).

Turning over certificates of deposits from state depositories is sufficient, without physical transfer of money to successor. In re *State Treasurer's Settlement*, 51 Neb. 116, 70 N.W. 532 (1897).

Requirement to account to successor for all money received can be satisfied only by delivery of actual cash. *State v. Hill*, 47 Neb. 456, 66 N.W. 541 (1896).

Action on bond for money unaccounted for must be brought in county of capital. *State v. Hill*, 38 Neb. 698, 57 N.W. 548 (1894).

#### **84-603 State Treasurer; seal authentication; copies evidence of original.**

The State Treasurer shall keep a seal of office for the authentication of all papers, writings and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence the same as the original papers and documents.

**Source:** R.S.1866, c. 4, § 22, p. 26; R.S.1913, § 5578; C.S.1922, § 4882; C.S.1929, § 84-603.

#### **84-604 State Treasurer and Auditor of Public Accounts; records; delivery to successors.**

The Auditor of Public Accounts and the State Treasurer shall severally deliver over to their successors in office all books, papers, records, vouchers, presses and furniture appertaining thereto.

**Source:** R.S.1866, c. 4, § 27, p. 27; R.S.1913, § 5579; C.S.1922, § 4883; C.S.1929, § 84-604.

Official records are not conclusive against sureties. *State v. Paxton*, 65 Neb. 110, 90 N.W. 983 (1902).

Official records are competent and prima facie evidence against State Treasurer's sureties. *Paxton v. State*, 59 Neb. 460, 81 N.W. 383 (1899).

#### **84-605 State Treasurer; records; inspection by Legislature; audit.**

All the books, papers, letters and transactions pertaining to the office of State Treasurer shall be open to the inspection of a committee of the Legislature to examine and settle all accounts, and to count all money; and, when the successor of any such treasurer shall be elected and qualified, the Auditor of Public Accounts shall examine and settle all accounts of such treasurer remaining unsettled, and give him a certified statement showing the balance of money, securities and effects for which he is accountable, and which have been delivered to his successor, and report the same to the Legislature.

**Source:** R.S.1866, c. 4, § 19, p. 26; R.S.1913, § 5580; C.S.1922, § 4884; C.S.1929, § 84-605.

**84-606 State Treasurer; oaths; power to administer.**

The State Treasurer shall have power to administer all oaths required by law, in matters pertaining to the duties of his office.

**Source:** R.S.1866, c. 4, § 21, p. 26; R.S.1913, § 5581; C.S.1922, § 4885; C.S.1929, § 84-606.

**84-607 State Treasurer; refusal to pay lawful warrant; penalty.**

If the State Treasurer shall willfully refuse or neglect to pay any warrant lawfully drawn upon the treasury, when the money for the payment of the same is in the treasury, he shall forfeit and pay fourfold the amount to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide.

**Source:** R.S.1866, c. 4, § 23, p. 26; R.S.1913, § 5582; C.S.1922, § 4886; C.S.1929, § 84-607.

**84-608 State Treasurer; deputy; duties; compensation.**

The State Treasurer shall have the power to appoint a deputy. The deputy may do and perform, in the absence of the treasurer, all of the acts and duties that he may be authorized to perform by the treasurer, subject to the same restrictions as the treasurer, and the treasurer shall be responsible for all the official acts of his deputy. Such deputy treasurer shall receive a salary of such amount as shall be fixed by the State Treasurer, payable monthly by warrant of the Director of Administrative Services on the State Treasurer.

**Source:** R.S.1866, c. 4, § 24, p. 26; Laws 1903, c. 102, § 1, p. 573; R.S.1913, § 5583; Laws 1921, c. 107, § 5, p. 380; C.S.1922, § 4887; C.S.1929, § 84-608; R.S.1943, § 84-608; Laws 1945, c. 254, § 3, p. 794; Laws 1947, c. 349, § 1, p. 1096; Laws 1951, c. 338, § 11, p. 1120; Laws 1953, c. 358, § 2, p. 1136; Laws 1957, c. 397, § 1, p. 1362; Laws 1959, c. 451, § 4, p. 1504; Laws 1963, c. 536, § 3, p. 1682.

## Cross References

**Bonds and oaths,** see Chapter 11.

**For other provisions as to deputy state treasurer,** see Chapter 84, article 8.

**Other compensation prohibited,** see section 84-723.

**84-608.01 Repealed. Laws 1957, c. 397, § 5.**

**84-608.02 Repealed. Laws 1961, c. 286, § 1.**

**84-609 Repealed. Laws 1987, LB 15, § 1.**

**84-610 Repealed. Laws 1987, LB 15, § 1.**

**84-611 Repealed. Laws 1987, LB 15, § 1.**

**84-612 Cash Reserve Fund; created; transfers; receipt of federal funds.**

(1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet

current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer such amounts not to exceed seven million seven hundred fifty-three thousand two hundred sixty-three dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2003, and June 30, 2007.

(4) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (3) of this section from the General Fund to the Cash Reserve Fund on or before June 30, 2008.

(5) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(6) On June 15, 2007, the State Treasurer shall transfer fifteen million six hundred seventy-four thousand one hundred seven dollars from the Cash Reserve Fund to the General Fund.

(7) On June 16, 2008, the State Treasurer shall transfer seventeen million nine hundred thirty-one thousand thirty dollars from the Cash Reserve Fund to the General Fund.

(8) On June 15, 2009, the State Treasurer shall transfer four million nine hundred ninety thousand five hundred five dollars from the Cash Reserve Fund to the General Fund.

(9) On or before June 16, 2008, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(10) On or before June 16, 2009, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(11) From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, forty million dollars of the Cash Reserve Fund shall be deemed to constitute the Early Childhood Education Endowment Fund. Such funds shall remain part of the Cash Reserve Fund for all purposes, except that the interest earned on such forty million dollars shall accrue as provided in section 84-613.

(12) The State Treasurer, at the direction of the budget administrator, shall transfer such amounts, as certified by the Director of Administrative Services, for employee health insurance claims and expenses, not to exceed twelve million dollars in total from the Cash Reserve Fund to the State Employees Insurance Fund between May 1, 2007, and June 30, 2011.

(13) On July 9, 2007, the State Treasurer shall transfer twelve million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(14) On July 9, 2007, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(15) On July 7, 2008, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(16) On or before August 1, 2007, the State Treasurer, at the direction of the budget administrator, shall transfer seventy-five million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(17) On or before June 30, 2009, the State Treasurer shall transfer nine million five hundred ninety thousand dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(18) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (12) of this section from the appropriate health insurance accounts of the State Employees Insurance Fund in such amounts as certified by the Director of Administrative Services to the Cash Reserve Fund on or before June 30, 2011.

(19) On July 9, 2007, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(20) On July 9, 2007, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

(21) On July 7, 2008, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(22) On July 7, 2008, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

(23) On July 7, 2009, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(24) On July 7, 2010, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(25) On July 7, 2011, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

(26) Within seven days after April 2, 2008, the State Treasurer shall transfer nine million dollars from the Cash Reserve Fund to the Water Contingency Cash Fund.

(27) On July 18, 2008, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Nebraska State Fair Relocation Cash Fund.

(28) Within five days after the budget division of the Department of Administrative Services notifies the State Treasurer that matching fund requirements under section 82-331 have been met, the State Treasurer shall transfer one

million dollars from the Cash Reserve Fund to the Nebraska Cultural Preservation Endowment Fund.

**Source:** Laws 1983, LB 59, § 5; Laws 1985, LB 713, § 2; Laws 1985, LB 501, § 2; Laws 1986, LB 739, § 1; Laws 1986, LB 870, § 1; Laws 1987, LB 131, § 1; Laws 1988, LB 1091, § 4; Laws 1989, LB 310, § 1; Laws 1991, LB 857, § 1; Laws 1991, LB 783, § 33; Laws 1992, LB 1268, § 1; Laws 1993, LB 38, § 4; Laws 1994, LB 1045, § 1; Laws 1996, LB 1290, § 6; Laws 1997, LB 401, § 5; Laws 1998, LB 63, § 1; Laws 1998, LB 988, § 1; Laws 1998, LB 1104, § 30; Laws 1998, LB 1134, § 5; Laws 1998, LB 1219, § 23; Laws 1999, LB 881, § 9; Laws 2000, LB 1214, § 2; Laws 2001, LB 541, § 6; Laws 2002, LB 1310, § 20; Laws 2003, LB 790, § 74; Laws 2003, LB 798, § 1; Laws 2004, LB 1090, § 2; Laws 2005, LB 427, § 2; Laws 2006, LB 1131, § 1; Laws 2006, LB 1256, § 9; Laws 2007, LB323, § 3; Laws 2008, LB846, § 21; Laws 2008, LB1094, § 8; Laws 2008, LB1116, § 9; Laws 2008, LB1165, § 2.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 846, section 21, with LB 1094, section 8, LB 1116, section 9, and LB 1165, section 2, to reflect all amendments.

**Note:** Changes made by LB 1094 became effective April 2, 2008. Changes made by LB 1165 became effective July 18, 2008. Changes made by LB 846 and LB 1116 became operative July 18, 2008.

#### **84-613 Cash Reserve Fund; investment; interest; disposition.**

Any money in the Cash Reserve 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. Until July 1, 2007, any interest earned by the fund shall accrue to the General Fund, except for interest earned on forty million dollars if such money is deemed to constitute the Early Childhood Education Endowment Fund in accordance with subsection (11) of section 84-612. From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, interest earned on the forty million dollars deemed to constitute the Early Childhood Education Endowment Fund shall accrue to the Early Childhood Education Endowment Cash Fund. Commencing July 1, 2007, any interest earned by the Cash Reserve Fund shall accrue to the General Fund.

**Source:** Laws 1983, LB 59, § 6; Laws 1986, LB 870, § 2; Laws 1987, LB 131, § 2; Laws 1988, LB 391, § 1; Laws 1995, LB 7, § 147; Laws 2004, LB 1090, § 3; Laws 2006, LB 1131, § 2; Laws 2006, LB 1256, § 10; Laws 2007, LB323, § 4.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **84-614 Unreversed transfer; considered encumbrance; when.**

Any transfer of funds made pursuant to subsection (2) of section 84-612 and which has not been reversed as provided in such section shall be considered an encumbrance against the General Fund.

**Source:** Laws 1983, LB 59, § 9; Laws 1986, LB 870, § 3.

#### **84-615 Petty cash fund; authorized.**

The State Treasurer may establish a petty cash fund of not to exceed one thousand dollars for the purpose of cashing checks for state senators and state employees. The type of checks and the maximum amount for which such checks may be written shall be prescribed by the State Treasurer. Proof of state employment may be required prior to cashing a check.

**Source:** Laws 1986, LB 599, § 1.

**84-616 Judgments and security for debt; authority of State Treasurer to sell and assign.**

The State Treasurer is authorized to sell, assign, and transfer any judgment held and owned by the state against any person and to sell, assign, and transfer any security in the nature of a mortgage held on behalf of the permanent school fund to any person who will pay the full amount thereof. The sale and assignment shall transfer to and confer upon such purchaser all the rights of the state in such judgment or security.

**Source:** Laws 1877, § 1, p. 207; R.S.1913, § 6679; C.S.1922, § 6216; C.S.1929, § 77-2605; R.S.1943, (1986), § 77-2405; Laws 1989, LB 13, § 1.

**84-617 State Treasurer Administrative Fund; created; use; investment; fee schedule.**

(1) There is hereby created the State Treasurer Administrative Fund. Funds received by the State Treasurer pursuant to his or her administrative duties shall be credited to the fund. Such funds shall include:

- (a) Payments for returned check charges or for electronic payments not accepted;
- (b) Payments for wire transfers initiated by the State Treasurer at the request of state agencies;
- (c) Payments for copies of cashed state warrants;
- (d) Payments for copies, including microfilm, computer disk, or magnetic tape, of listings relating to outstanding state warrants; and
- (e) Payments for copies, including microfilm, computer disk, or magnetic tape, of listings of owners of unclaimed property held by the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act.

Money in the fund received pursuant to subdivisions (1)(a) through (d) of this section shall be credited to the General Fund quarterly. Money in the State Treasurer Administrative Fund received pursuant to subdivision (1)(e) of this section shall be credited to the Unclaimed Property Cash Fund. The State Treasurer may retain such amount as he or she deems appropriate in the State Treasurer Administrative Fund for purposes of making change for cash payments. Any money in the 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.

(2) The State Treasurer may establish a fee schedule for any of the services listed in subsection (1) of this section. The fees shall approximate the cost of providing the service.

**Source:** Laws 1993, LB 50, § 1; Laws 1994, LB 1066, § 132; Laws 2003, LB 354, § 1; Laws 2008, LB619, § 1.  
Effective date July 18, 2008.

## Cross References

Fee for collection of bad debt, credit to the State Treasurer Administrative Fund, see section 84-620.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**84-617.01 Returned check or electronic payment not accepted; State Treasurer; state agency; assessment of charge; limitation.**

Anytime that the State Treasurer assesses a returned check charge or a charge for an electronic payment that is not accepted against a state agency, that agency may assess a charge to the payor of the check or the person who authorized the electronic payment. The charges assessed by the state agency shall be used to make payment to the State Treasurer and to reimburse the state agency for the assessments and any administrative costs incurred by the agency. The charge assessed by the State Treasurer or a state agency shall not exceed thirty dollars. The charge assessed by the State Treasurer shall be credited to the State Treasurer Administrative Fund.

**Source:** Laws 2008, LB619, § 2.  
Effective date July 18, 2008.

**84-618 Treasury Management Cash Fund; created; use; investment.**

The Treasury Management Cash Fund is created. A pro rata share of the budget appropriated for the treasury management functions of the State Treasurer shall be charged to the income of each fund held in invested cash, and such charges shall be transferred to the Treasury Management Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the State Treasurer in carrying out the treasury management functions under section 84-602. Approval of the agencies, boards, and commissions administering these funds shall not be required.

It is the intent of this section to have funds held in invested cash be charged a pro rata share of the treasury management expense when this is not prohibited by statute or the Constitution of Nebraska.

Transfers may be made from the Treasury Management Cash Fund to the General Fund at the direction of the Legislature. Any money in the Treasury Management 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.

**Source:** Laws 2003, LB 424, § 1.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-619 Repealed. Laws 2006, LB 1061, § 29.**

**84-620 State Treasurer; debtor of state agency; fees authorized; payment limitations.**

(1) The State Treasurer, with state agency approval, may electronically collect a bad debt and a fee from a debtor of the state agency equal to the cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. The fee shall be remitted to the State Treasurer Administrative Fund.

(2) After the payor has originated two bad debt payments to a state agency in a period of one year, the state agency may refuse to accept future payments by check and may require a money order, cash, a cashier's check, or a certified check for payment.

**Source:** Laws 2008, LB620, § 2.  
Effective date July 18, 2008.

## ARTICLE 7

### GENERAL PROVISIONS AS TO STATE OFFICERS

#### Cross References

#### Constitutional provisions:

Appointments, see Article IV, section 10, Constitution of Nebraska.

Conflicts of interest, see Article III, section 16, Constitution of Nebraska.

Treasury withdrawals, none without specific appropriation, see Article III, section 25, Constitution of Nebraska.

Vacancies, nonelective state officers, see Article IV, section 12, Constitution of Nebraska.

**Expenses**, see sections 81-1174 to 81-1177.

**Impeachment**, see section 24-101.

**Indemnification for certain judgments**, see sections 81-8,239.05 and 81-8,239.06.

**Official bonds**, see Chapter 11.

**Reports to Governor**, when required, see section 84-102.

**State funds**, deposit and investment of, see Chapter 77, article 23.

#### Section

- 84-701. Fiscal year; beginning; end.
- 84-702. State officers; biennial reports to Clerk of the Legislature; number required.
- 84-703. Repealed. Laws 1963, c. 339, § 1.
- 84-704. Repealed. Laws 1963, c. 339, § 1.
- 84-705. Repealed. Laws 1947, c. 344, § 8.
- 84-706. Repealed. Laws 1959, c. 265, § 1.
- 84-707. Repealed. Laws 1951, c. 341, § 1.
- 84-708. Repealed. Laws 1951, c. 341, § 1.
- 84-709. Repealed. Laws 1951, c. 341, § 1.
- 84-710. Fees, proceeds, and money due state; payment to State Treasurer; duty of state officers and department heads; exceptions.
- 84-711. Fees; failure to remit to State Treasurer; penalty.
- 84-712. Public records; free examination; memorandum and abstracts; copies; fees.
- 84-712.01. Public records; right of citizens; full access; fee authorized.
- 84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.
- 84-712.03. Public records; denial of rights; remedies.
- 84-712.04. Public records; denial of rights; public body; provide information.
- 84-712.05. Records which may be withheld from the public; enumerated.
- 84-712.06. Public record; portion provided; when.
- 84-712.07. Public records; public access; equitable relief; attorney's fees; costs.
- 84-712.08. Records; federal government; exception.
- 84-712.09. Violation; penalty.
- 84-713. Repealed. Laws 1997, LB 590, § 19.
- 84-713.01. Repealed. Laws 1997, LB 590, § 19.
- 84-713.02. Repealed. Laws 1997, LB 590, § 19.
- 84-713.03. Repealed. Laws 1997, LB 590, § 19.
- 84-713.04. Repealed. Laws 1997, LB 590, § 19.
- 84-713.05. Transferred to section 50-117.
- 84-714. Transferred to section 90-102.
- 84-715. Transferred to section 90-103.
- 84-716. Transferred to section 90-104.
- 84-716.01. Transferred to section 90-105.
- 84-716.02. Repealed. Laws 1965, c. 571, § 1.
- 84-716.03. Transferred to section 90-106.
- 84-717. Transferred to section 90-107.

**§ 84-701****STATE OFFICERS**

## Section

- 84-718. Elective constitutional state officer; status; effect of bond or insurance policy; right of action to establish; consent of state to suit.
- 84-719. Elective constitutional state officer; status; effect of bond; action to establish; notice and hearing; service.
- 84-720. Elective constitutional state officer; status; effect of bond; action to establish; notice; service upon Attorney General.
- 84-721. Secretary of State; Auditor of Public Accounts; State Treasurer; Lieutenant Governor; salaries.
- 84-721.01. Repealed. Laws 1965, c. 567, § 3.
- 84-721.02. Repealed. Laws 1961, c. 286, § 1.
- 84-721.03. Repealed. Laws 1963, c. 341, § 1.
- 84-722. Repealed. Laws 1959, c. 266, § 1.
- 84-723. State officers; other compensation from state; prohibition.
- 84-724. Repealed. Laws 1959, c. 266, § 1.
- 84-725. Transferred to section 90-108.
- 84-726. Transferred to section 90-109.
- 84-727. Transferred to section 90-110.
- 84-728. Transferred to section 90-111.
- 84-729. Transferred to section 90-112.
- 84-730. Transferred to section 90-113.
- 84-731. Governor; duty to implement laws; exceptions; Attorney General; action to implement.
- 84-732. Governor or Attorney General; duty to implement laws; violation; penalty.
- 84-733. Advertising or promotional materials; state funds; limitation.

**84-701 Fiscal year; beginning; end.**

The fiscal year shall commence on July 1 in each year and end on June 30 in each year.

**Source:** R.S.1866, c. 4, § 28, p. 27; R.S.1913, § 5584; Laws 1921, c. 212, § 1, p. 751; C.S.1922, § 4891; C.S.1929, § 84-701.

**84-702 State officers; biennial reports to Clerk of the Legislature; number required.**

The state officers who are required by law to make biennial reports to the Clerk of the Legislature shall cause as many copies as they may determine proper to be printed and ready for distribution on or before the first day of the session of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the state officer responsible for the report.

**Source:** Laws 1881, c. 80, § 3, p. 390; R.S.1913, § 5585; Laws 1915, c. 100, § 1, p. 243; C.S.1922, § 4892; C.S.1929, § 84-702; R.S. 1943, § 84-702; Laws 1947, c. 344, § 6, p. 1088; Laws 1955, c. 231, § 23, p. 729; Laws 1979, LB 322, § 73; Laws 1981, LB 545, § 49.

**84-703 Repealed. Laws 1963, c. 339, § 1.****84-704 Repealed. Laws 1963, c. 339, § 1.****84-705 Repealed. Laws 1947, c. 344, § 8.****84-706 Repealed. Laws 1959, c. 265, § 1.****84-707 Repealed. Laws 1951, c. 341, § 1.**

**84-708 Repealed. Laws 1951, c. 341, § 1.**

**84-709 Repealed. Laws 1951, c. 341, § 1.**

**84-710 Fees, proceeds, and money due state; payment to State Treasurer; duty of state officers and department heads; exceptions.**

It shall be unlawful for any executive department, state institution, board, or officer acting under or by virtue of any statute or authority of the state, including the State Racing Commission, to receive any fees, proceeds from the sale of any public property, or any money belonging to the state or due for any service rendered by virtue of state authority without paying the same into the state treasury within three business days of the receipt thereof when the aggregate amount is five hundred dollars or more and within seven days of the receipt thereof when the aggregate amount is less than five hundred dollars. The State Treasurer may, upon a written request from an executive department, state institution, board, or officer stating that the applicable time period cannot be met, grant additional time to remit the funds to the state treasury. Funds received by an executive department, state institution, board, or officer for a good or service which may or may not be delivered contingent upon a selection process shall not be subject to this section until the selection period is over.

The provisions of this section and section 84-711 shall not apply to money received as proceeds of any fair, exposition, or exhibition held by any state board or society or of membership contributions to or receipts from miscellaneous sales by the Nebraska State Historical Society.

Such money so paid into the treasury shall be withdrawn therefrom or paid out only upon proper voucher and warrant.

The head of any institution receiving, from any source, funds to be held in trust and expended for the benefit of any inmate thereof shall not be required to pay such trust funds into the state treasury as provided in this section but shall, at the end of each month, file with the Director of Administrative Services a detailed and attested statement of all such money received and expended by him or her.

**Source:** Laws 1911, c. 132, § 1, p. 442; R.S.1913, § 5593; C.S.1922, § 4900; C.S.1929, § 84-710; R.S.1943, § 84-710; Laws 1961, c. 453, § 1, p. 1381; Laws 1961, c. 418, § 3, p. 1280; Laws 1984, LB 933, § 19; Laws 1999, LB 61, § 1.

**84-711 Fees; failure to remit to State Treasurer; penalty.**

The failure or refusal of an employee or officer of an executive department, state institution, or board to pay over the public money, or any part thereof, belonging to the state or to account to or to make settlement with the State Treasurer upon demand shall be prima facie evidence of embezzlement, and such person shall be punished, as provided by law, for the embezzlement of public funds.

**Source:** Laws 1911, c. 132, § 2, p. 443; R.S.1913, § 5594; C.S.1922, § 4901; C.S.1929, § 84-711; R.S.1943, § 84-711; Laws 1999, LB 61, § 2.

**84-712 Public records; free examination; memorandum and abstracts; copies; fees.**

(1) Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to (a) examine the same, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(d) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reason-

able good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

**Source:** R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1, p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383; Laws 1979, LB 86, § 1; Laws 2000, LB 628, § 1.

Dockets of justice containing entry of judgments are public records. State ex rel. Newby v. Ellsworth, 61 Neb. 444, 85 N.W. 439 (1901).

Party was not entitled to inspection of certified copy of court reporter's record before same is offered in evidence. Spielman v. Flynn, 19 Neb. 342, 27 N.W. 224 (1886).

Any person interested may examine records without charge, and fee book of clerk of court is public record. State ex rel. Griggs v. Meeker, 19 Neb. 106, 26 N.W. 620 (1886).

Numerical indexes of instruments concerning title to real estate kept by county clerk are public records. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353 (1885).

#### **84-712.01 Public records; right of citizens; full access; fee authorized.**

(1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

**Source:** Laws 1961, c. 454, § 2, p. 1383; Laws 1979, LB 86, § 2; Laws 1994, LB 1275, § 12; Laws 2000, LB 628, § 2.

#### **84-712.02 Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.**

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any

public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

**Source:** Laws 1961, c. 454, § 4, p. 1384; Laws 1991, LB 2, § 30.

**84-712.03 Public records; denial of rights; remedies.**

Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(1) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(2) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

**Source:** Laws 1961, c. 454, § 5, p. 1384; Laws 1977, LB 39, § 316; Laws 1979, LB 86, § 3; Laws 2000, LB 628, § 3.

When a writ of mandamus is sought pursuant to this section, the party seeking the writ must first show (1) that the party is a citizen of the state or other person interested in the examination of the public records, (2) that the document sought by the party is a public record as defined by section 84-712.01, and (3) that the party has been denied the access to the public record guaranteed by section 84-712; thereafter, if the public body

holding the record wishes to oppose the issuance of a writ of mandamus, the public body must show, by clear and convincing evidence, that the public record at issue is exempt from the disclosure requirement under one of the exceptions provided by section 84-712.05 or section 84-712.08. *State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

**84-712.04 Public records; denial of rights; public body; provide information.**

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

**Source:** Laws 1979, LB 86, § 4; Laws 1983, LB 3, § 1.

**84-712.05 Records which may be withheld from the public; enumerated.**

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

**Source:** Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1.

#### Cross References

**Patient Safety Improvement Act**, see section 71-8701.

**Unmarked Human Burial Sites and Skeletal Remains Protection Act**, see section 12-1201.

A public record is an investigatory record under this section where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body's duty to investigate or examine supports a colorable claim of rationality. When an inquiry by an administrative agency departs from the routine and focuses with special intensity on a particular party, an investigation is underway for purposes of this section. Records that have been "disclosed" within the meaning of this

section are only those records that a public body has, in its official capacity, already made available to the general public. State ex rel. Neb. Health Care Assn. v. Dept. of Health and Human Services Finance and Support, 255 Neb. 784, 587 N.W.2d 100 (1998).

Court upheld Attorney General's refusal to disclose requested documents pursuant to subsections (4) and (5) of this section. State ex rel. Sileven v. Spire, 243 Neb. 451, 500 N.W.2d 179 (1993).

#### **84-712.06 Public record; portion provided; when.**

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

**Source:** Laws 1979, LB 86, § 6.

#### **84-712.07 Public records; public access; equitable relief; attorney's fees; costs.**

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

**Source:** Laws 1979, LB 86, § 7.

#### **84-712.08 Records; federal government; exception.**

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

**Source:** Laws 1979, LB 86, § 8.

**84-712.09 Violation; penalty.**

Any official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1979, LB 86, § 10.

**84-713 Repealed. Laws 1997, LB 590, § 19.**

**84-713.01 Repealed. Laws 1997, LB 590, § 19.**

**84-713.02 Repealed. Laws 1997, LB 590, § 19.**

**84-713.03 Repealed. Laws 1997, LB 590, § 19.**

**84-713.04 Repealed. Laws 1997, LB 590, § 19.**

**84-713.05 Transferred to section 50-117.**

**84-714 Transferred to section 90-102.**

**84-715 Transferred to section 90-103.**

**84-716 Transferred to section 90-104.**

**84-716.01 Transferred to section 90-105.**

**84-716.02 Repealed. Laws 1965, c. 571, § 1.**

**84-716.03 Transferred to section 90-106.**

**84-717 Transferred to section 90-107.**

**84-718 Elective constitutional state officer; status; effect of bond or insurance policy; right of action to establish; consent of state to suit.**

Whenever an issue arises involving the status or other legal relations of an elective constitutional state officer, or the validity, terms, or duration of his or her official bond or equivalent commercial insurance policy, and the issue is within the original jurisdiction of the Supreme Court of Nebraska, such officer is authorized to institute an action in his or her own name in such court for the purpose of determining such issues, and to make the State of Nebraska and any other person, firm, or corporation parties defendant therein. The State of Nebraska consents to be sued in any such action.

**Source:** Laws 1935, c. 187, §§ 1, 2, p. 693; C.S.Supp.,1941, §§ 84-727, 84-728; R.S.1943, § 84-718; Laws 2004, LB 884, § 52.

**84-719 Elective constitutional state officer; status; effect of bond; action to establish; notice and hearing; service.**

Upon the filing of a petition, the Supreme Court shall by order fix the time for hearing thereon, which shall be not less than three days nor more than ten days from the filing of the petition. A copy of the order, certified by the clerk of the court, shall be served by the bailiff of the court, or other person appointed by the court for that purpose, upon the defendants in the manner provided for service of a summons in a civil action, not less than two days before said hearing, unless service is waived and voluntary appearance entered.

**Source:** Laws 1935, c. 187, § 3, p. 693; C.S.Supp.,1941, § 84-729; R.S.1943, § 84-719; Laws 1983, LB 447, § 101.

**84-720 Elective constitutional state officer; status; effect of bond; action to establish; notice; service upon Attorney General.**

In such action the state hereby enters its voluntary appearance, and notice of hearing shall be served on the Attorney General within the time provided for service on other defendants in said proceedings.

**Source:** Laws 1935, c. 187, § 4, p. 693; C.S.Supp.,1941, § 84-730.

**84-721 Secretary of State; Auditor of Public Accounts; State Treasurer; Lieutenant Governor; salaries.**

Until January 4, 2007, there shall be paid as salaries to certain constitutional officers as follows: Secretary of State, the sum of sixty-five thousand dollars per year; Auditor of Public Accounts, the sum of sixty thousand dollars per year; State Treasurer, the sum of sixty thousand dollars per year; and Lieutenant Governor, the sum of sixty thousand dollars per year. Commencing January 4, 2007, there shall be paid as salaries to certain constitutional officers as follows: Secretary of State, the sum of eighty-five thousand dollars per year; Auditor of Public Accounts, the sum of eighty-five thousand dollars per year; State Treasurer, the sum of eighty-five thousand dollars per year; and Lieutenant Governor, the sum of seventy-five thousand dollars per year. Such salaries shall be payable in equal monthly installments.

**Source:** Laws 1951, c. 333, § 1, p. 1108; Laws 1957, c. 397, § 2, p. 1363; Laws 1959, c. 454, § 1, p. 1508; Laws 1961, c. 456, § 1, p. 1394; Laws 1963, c. 538, § 2, p. 1684; Laws 1963, c. 537, § 1, p. 1683; Laws 1965, c. 567, § 2, p. 1853; Laws 1969, c. 834, § 1, p. 3157; Laws 1969, c. 835, § 1, p. 3158; Laws 1969, c. 836, § 1, p. 3159; Laws 1973, LB 246, § 3; Laws 1978, LB 541, § 2; Laws 1986, LB 43, § 5; Laws 1990, LB 503, § 4; Laws 2000, LB 956, § 4; Laws 2006, LB 817, § 4.

## Cross References

For salaries of other constitutional officers:

Attorney General, see section 84-201.01.

Governor, see section 84-101.01.

**84-721.01 Repealed. Laws 1965, c. 567, § 3.**

**84-721.02 Repealed. Laws 1961, c. 286, § 1.**

**84-721.03 Repealed. Laws 1963, c. 341, § 1.**

**84-722 Repealed. Laws 1959, c. 266, § 1.****84-723 State officers; other compensation from state; prohibition.**

No officer whose salary is fixed by sections 84-608, 84-721, and 84-723 shall receive any compensation from the State of Nebraska other than the salary as fixed by sections 84-608, 84-721, and 84-723.

**Source:** Laws 1957, c. 397, § 3, p. 1363.

**84-724 Repealed. Laws 1959, c. 266, § 1.****84-725 Transferred to section 90-108.****84-726 Transferred to section 90-109.****84-727 Transferred to section 90-110.****84-728 Transferred to section 90-111.****84-729 Transferred to section 90-112.****84-730 Transferred to section 90-113.****84-731 Governor; duty to implement laws; exceptions; Attorney General; action to implement.**

Pursuant to his constitutional duty to take care that the laws be faithfully executed, whenever it shall come to the attention of the Governor that any agency charged with the implementation of any act of the Legislature is failing to implement such act, he shall immediately in writing order the agency to commence implementation unless (1) the act shall have been held unconstitutional by final judgment of the Supreme Court, (2) the agency shall have been enjoined from implementation by court order, or (3) an action challenging the constitutionality of the act is pending in a court of competent jurisdiction. He shall furnish a copy of such letter to the Attorney General together with a written order to commence or cause to be commenced an action in a court of competent jurisdiction to compel implementation if the agency has not, within ten working days, commenced implementation. It shall be the duty of the Attorney General to comply with such order.

**Source:** Laws 1978, LB 98, § 1.

**84-732 Governor or Attorney General; duty to implement laws; violation; penalty.**

The knowing failure or refusal of either the Governor or Attorney General to perform the duties imposed upon them by section 84-731 shall constitute a misdemeanor in office within the meaning of section 5 of Article IV of the Constitution of Nebraska and render the offender liable to a fine of one hundred dollars and to impeachment.

**Source:** Laws 1978, LB 98, § 2.

**84-733 Advertising or promotional materials; state funds; limitation.**

Beginning January 1 of the year in which the Governor is elected and continuing through the day of the general election during such year, no state funds shall be used for any radio, television, or print media advertising or

promotional materials which refer to any one or more of the following state officeholders by name: Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, or Auditor of Public Accounts.

**Source:** Laws 2002, LB 1086, § 1.

## ARTICLE 8 DEPUTIES

### Cross References

**Attorney General**, deputy, appointment, duties, compensation, see section 84-206.

**Auditor of Public Accounts**, deputy, appointment, duties, compensation, see section 84-314.

**Secretary of State**, deputy, appointment, duties, compensation, see sections 84-508 and 84-509.

**State Treasurer**, deputy, appointment, duties, compensation, see sections 84-608 and 84-723.

### Section

84-801.	State officers; deputies; appointment; bond or insurance.
84-802.	Deputies; duties.
84-803.	State officers; appointment as deputy prohibited.
84-804.	Transferred to section 23-1704.01.
84-805.	Transferred to section 23-1704.02.
84-806.	Transferred to section 23-1704.03.
84-806.01.	Repealed. Laws 1976, LB 782, § 16.
84-807.	Deputies; oath.
84-808.	Transferred to section 23-1115.
84-809.	Transferred to section 24-403.
84-810.	Repealed. Laws 1959, c. 266, § 1.
84-811.	Repealed. Laws 1967, c. 402, § 1.

### 84-801 State officers; deputies; appointment; bond or insurance.

The Auditor of Public Accounts, State Treasurer, and State Librarian respectively, may appoint a deputy for whose acts he or she shall be responsible. The appointment shall be in writing and shall be revocable in writing by the principal. The deputy shall be bonded or insured as required by section 11-201. Both the appointment and revocation shall be filed and kept by the principal.

**Source:** R.S.1866, c. 15, § 1, p. 127; R.S.1913, § 5735; C.S.1922, § 5064; C.S.1929, § 84-801; R.S.1943, § 84-801; Laws 1978, LB 653, § 39; Laws 1990, LB 821, § 52; Laws 2004, LB 884, § 53.

### 84-802 Deputies; duties.

In the absence or disability of the principal, the deputy shall perform the duties of the principal pertaining to the office, but when the officer is required to act in conjunction with or in place of another officer, the deputy cannot act in the officer's place.

**Source:** R.S.1866, c. 16, § 2, p. 127; R.S.1913, § 5736; C.S.1922, § 5065; C.S.1929, § 84-802; R.S.1943, § 84-802; Laws 1990, LB 821, § 53.

When the Tax Commissioner holds factfinding hearings he is not acting as a member of the State Board of Equalization. Therefore, delegation of that duty to his deputy does not violate

this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

### 84-803 State officers; appointment as deputy prohibited.

The Auditor of Public Accounts, State Treasurer, and State Librarian cannot appoint any of the others his or her deputy.

**Source:** R.S.1866, c. 15, § 3, p. 127; R.S.1913, § 5737; C.S.1922, § 5066; C.S.1929, § 84-803; R.S.1943, § 84-803; Laws 1990, LB 821, § 54.

**84-804 Transferred to section 23-1704.01.**

**84-805 Transferred to section 23-1704.02.**

**84-806 Transferred to section 23-1704.03.**

**84-806.01 Repealed. Laws 1976, LB 782, § 16.**

**84-807 Deputies; oath.**

Each deputy shall take the same oath as the principal which shall be endorsed upon and filed with the certificate of appointment.

**Source:** R.S.1866, c. 15, § 5, p. 127; R.S.1913, § 5741; C.S.1922, § 5070; C.S.1929, § 84-807; R.S.1943, § 84-807; Laws 1990, LB 821, § 55.

Under prior law no distinction is made between state and county officers under this section. Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924).

**84-808 Transferred to section 23-1115.**

**84-809 Transferred to section 24-403.**

**84-810 Repealed. Laws 1959, c. 266, § 1.**

**84-811 Repealed. Laws 1967, c. 402, § 1.**

**ARTICLE 9**

**RULES OF ADMINISTRATIVE AGENCIES**

(a) ADMINISTRATIVE PROCEDURE ACT

- Section
- 84-901. Terms, defined.
- 84-901.01. Repealed. Laws 1986, LB 992, § 11.
- 84-901.02. Repealed. Laws 1986, LB 992, § 11.
- 84-902. Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.
- 84-903. Agency; rules and regulations; publish.
- 84-904. Repealed. Laws 1986, LB 992, § 11.
- 84-905. Agency; rules and regulations; availability required; price.
- 84-905.01. Rule or regulation; review by Attorney General.
- 84-906. Rule or regulation; when valid; presumption; limitation of action.
- 84-906.01. Official rulemaking or regulationmaking record; agency maintain; contents.
- 84-906.02. Public comments; notice; agency; powers.
- 84-906.03. Secretary of State; duties.
- 84-906.04. Secretary of State; maintain docket for pending proceedings; contents.
- 84-906.05. Rule or regulation; judicial notice.
- 84-906.06. Repealed. Laws 1982, LB 784, § 2.
- 84-907. Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure.
- 84-907.01. Rule or regulation; public hearing; notice to subscribers.
- 84-907.02. Secretary of State; collection and disbursement of funds.
- 84-907.03. Secretary of State Administration Cash Fund; created; use; investment.
- 84-907.04. Proposed rule or regulation; explanatory statement; contents; use.
- 84-907.05. Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency.
- 84-907.06. Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council.

## RULES OF ADMINISTRATIVE AGENCIES

- Section
- 84-907.07. Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.
- 84-907.08. Petition to adopt a rule or regulation; form; procedure.
- 84-907.09. Adoption, amendment, or repeal of rule or regulation; provide information to Governor.
- 84-907.10. Member of the Legislature; complaint; procedure.
- 84-908. Rule or regulation; adoption; amendment; repeal; considerations; when effective.
- 84-908.01. Repealed. Laws 1986, LB 992, § 11.
- 84-908.02. Repealed. Laws 1986, LB 992, § 11.
- 84-908.03. Repealed. Laws 1986, LB 992, § 11.
- 84-908.04. Repealed. Laws 1986, LB 992, § 11.
- 84-908.05. Repealed. Laws 1986, LB 992, § 11.
- 84-909. Agency; rules and regulations governing procedure; adoption.
- 84-909.01. Model rules of procedure; Attorney General; agency; duties.
- 84-910. Repealed. Laws 1994, LB 446, § 40.
- 84-911. Validity of rule or regulation; declaratory judgment; procedure.
- 84-912. Repealed. Laws 1994, LB 446, § 40.
- 84-912.01. Petition for declaratory order; issuance by agency; duties; effect.
- 84-912.02. Petition for intervention; hearing officer or designee; grant petition; conditions; powers and duties; order.
- 84-912.03. Tax Equalization and Review Commission; exemption.
- 84-913. Contested cases; notice of hearing; record; transcript.
- 84-913.01. Hearing officer; prehearing conference; procedure.
- 84-913.02. Hearing officer; prehearing conference; powers and duties; orders.
- 84-913.03. Hearing officer; prehearing conference and hearing; how conducted.
- 84-913.04. Proceedings; limitation on participation.
- 84-914. Contested cases; evidence; procedure; ex parte communications.
- 84-915. Contested cases; orders; findings of fact; conclusions of law; notification.
- 84-915.01. Official record of contested cases; agency maintain; contents; use.
- 84-916. Act; intent.
- 84-917. Contested case; appeal; procedure.
- 84-918. District court decision; appeal.
- 84-919. Act; exclusive means of judicial review.
- 84-919.01. Negotiated Rulemaking Act; use by agency.
- 84-920. Act, how cited.

### (b) NEGOTIATED RULEMAKING ACT

- 84-921. Act, how cited.
- 84-922. Purpose of act.
- 84-923. Terms, defined.
- 84-924. Negotiated rulemaking committee; establishment; agency director; use of negotiated rulemaking procedure; determination; considerations; convenor; duties.
- 84-925. Petition to use negotiated rulemaking committee; procedure; exception.
- 84-926. Negotiated rulemaking committee established; agency; duties; Secretary of State; duties.
- 84-927. Negotiated rulemaking committee; establishment; notice of decision; agency support; termination.
- 84-928. Negotiated rulemaking committee; membership; procedure.
- 84-929. Negotiated rulemaking committee; powers and duties; consensus; procedure; report; contents.
- 84-930. Facilitator; selection; duties.
- 84-931. Convenor or facilitator; contract authorized; state employee; disqualification; members of negotiated rulemaking committee; expenses; per diem; grants or gifts.
- 84-932. Agency action; judicial review; limitation; negotiated rule; judicial review; treatment.

## (a) ADMINISTRATIVE PROCEDURE ACT

**84-901 Terms, defined.**

For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;

(2) Rule or regulation shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure. Rule or regulation shall not include (a) rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public or (b) permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs and any rules of interpretation thereof. For purposes of the act, every rule and regulation which prescribes a penalty shall be presumed to have general applicability or to affect private rights and interests;

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing;

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

- (a) Communications which do not pertain to the merits of a contested case;
- (b) Communications required for the disposition of ex parte matters as authorized by law;
- (c) Communications in a ratemaking or rulemaking proceeding; and
- (d) Communications to which all parties have given consent; and

(5) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

**Source:** Laws 1945, c. 255, § 1, p. 795; Laws 1947, c. 350, § 1, p. 1097; Laws 1951, c. 342, § 1, p. 1128; Laws 1959, c. 456, § 1, p. 1510; Laws 1974, LB 819, § 11; Laws 1978, LB 44, § 1; Laws 1981, LB 130, § 1; Laws 1986, LB 992, § 1; Laws 1987, LB 253, § 1; Laws 1994, LB 414, § 135; Laws 1994, LB 446, § 14.

- 1. Contested case
- 2. Agency subject to act or not
- 3. Rules
- 4. Miscellaneous

**1. Contested case**

Pursuant to subsection (3) of this section, a proceeding becomes a contested case when notice and a hearing are required. *Stoneman v. United Neb. Bank*, 254 Neb. 477, 577 N.W.2d 271 (1998).

At a hearing before the Nebraska Liquor Control Commission on a contested case, the applicant is entitled to notice of the issues. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The selection of a site for a public improvement was legislative in nature and was not a contested case. *Stones v. Plattsmouth Airport Authority*, 193 Neb. 552, 228 N.W.2d 129 (1975).

Application of two public power districts to Nebraska Power Review Board for approval of an agreement limiting the areas in which and the customers to whom they would furnish electrical energy at wholesale, and opposition thereto by affected cities, was a contested case hereunder. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

The words contested case are defined by this section. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

**2. Agency subject to act or not**

The Administrative Procedure Act does not apply to state agencies without authority to make rules and regulations affecting private rights, private interests, or procedures available to the public. *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).

The State Board of Equalization and Assessment is a state agency so as to be subject to the Administrative Procedure Act. *Pentzien, Inc. v. State*, 227 Neb. 434, 418 N.W.2d 546 (1988).

The Administrative Procedure Act and its appeal procedures are applicable only to agencies of the state, and not to administrative agencies of municipal government, i.e., the personnel board of the City of Omaha. *Hammann v. City of Omaha*, 227 Neb. 285, 417 N.W.2d 323 (1987); *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).

The State Racing Commission is an administrative agency as defined in subsection (1) of this section. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

The Commission of Industrial Relations is an administrative agency within the purview of the Administrative Procedure Act. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984).

Appeals taken under the Administrative Procedure Act may only be taken from agencies of the state. The Omaha Housing Authority is not such an agency. *Fisher v. Housing Auth. of City of Omaha*, 214 Neb. 499, 334 N.W.2d 636 (1983).

Court of Industrial Relations is an agency within provisions of this section. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

This case refers to a district court decision which held that a board of county commissioners is not a state agency under this and related sections. *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972).

State Board of Equalization and Assessment subject to this act. *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 178 N.W.2d 759 (1970).

The Nebraska Liquor Control Commission is an administrative agency as defined in this section. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

Provisions of this section disclose that act was intended to apply to the State Railway Commission. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

**3. Rules**

This section provides a definition of only the term "rule" and does not create any affirmative duties for the Public Service

Commission to engage in rulemaking when interpreting a federal statute. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

Subsection (2) of this section does not limit the definition of "private rights and interests" to those rights and interests that are unrelated to the workplace; if a rule or regulation prescribes a penalty, it is presumed to affect private rights and interests, regardless of whether the rights or interests at stake are those of an agency employee or some other individual. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).

To be valid, an administrative rule or regulation must be properly promulgated, approved, and filed. *Haven Home, Inc. v. Department of Pub. Welfare*, 216 Neb. 731, 346 N.W.2d 225 (1984).

This act requires Department of Banking to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971).

Failure of State Board of Vocational Education to promulgate rules pursuant to this section immaterial in situation where hearing and notice not required. *Chaloupka v. Area Vocational Technical School No. 2*, 184 Neb. 196, 165 N.W.2d 719 (1969).

Rules of railway commission applied to controversy between railroads and motor carriers. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

Liquor Control Commission is an administrative agency required to file rules. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

Administrative agencies are required to adopt regulations which have the force and effect of a statute. *Farmers Co-op. Elevator Assn. of Big Springs v. Strand*, 382 F.2d 224 (8th Cir. 1967).

Rates of carriers are rules which are required to be filed. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

**4. Miscellaneous**

The Nebraska Quality Jobs Board is not an "agency" subject to the Administrative Procedure Act, and an application to the Nebraska Quality Jobs Board is not a "contested case", within the meaning of this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

In an action brought under the Administrative Procedure Act, it is the responsibility of the agency to provide the transcript in a timely fashion. The failure to do so subjects the agency to the disciplinary powers of the court. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).

Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).

It does not constitute an improper delegation of authority to permit matters of enforcement, such as the manner and the method, to be left to the reasonable discretion of administrative officers. *State v. Sprague*, 213 Neb. 581, 330 N.W.2d 739 (1983).

Where there is a specific statute for an agency, setting out the method and scope of appeal, it should be applied instead of this act. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

There were practical difficulties which prevented a strict application of Administrative Procedure Act to proceedings before the State Board of Equalization and Assessment. *County of Kimball v. State Board of Equalization & Assessment*, 180 Neb.

482, 143 N.W.2d 893 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

Rate tariffs of telephone companies are excepted from requirements of filing in office of Secretary of State. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

**84-901.01 Repealed. Laws 1986, LB 992, § 11.**

**84-901.02 Repealed. Laws 1986, LB 992, § 11.**

**84-902 Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.**

(1) Each agency shall file in the office of the Secretary of State a certified copy of the rules and regulations in force and effect in such agency. The Secretary of State shall keep a permanent file of all such rules and regulations. Such file shall be updated and kept current upon receipt of any rules and regulations adopted, amended, or repealed and filed with the Secretary of State as provided in the Administrative Procedure Act and shall be open to public inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules and regulations to be filed as complete file pages and to remove all superseded pages to a separate file.

(2) Rules and regulations filed with the Secretary of State pursuant to the Administrative Procedure Act shall be filed in the manner and form prescribed by the Secretary of State. The Secretary of State shall issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting rules and regulations to the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Secretary of State may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

**Source:** Laws 1945, c. 255, § 2, p. 795; Laws 1947, c. 350, § 2, p. 1098; Laws 1973, LB 134, § 1; Laws 1974, LB 604, § 1; Laws 1976, LB 615, § 1; Laws 1978, LB 44, § 8; Laws 1986, LB 992, § 2; Laws 1987, LB 253, § 2; Laws 2004, LB 915, § 1.

The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. Durousseau v. Nebraska State Racing Commission, 194 Neb. 288, 231 N.W.2d 566 (1975).

Where penal provisions of statute are operative independently of rules, failure to file any rules does not bar prosecution. Scherer v. State, 168 Neb. 127, 95 N.W.2d 329 (1959).

Rates of carriers must be filed with Secretary of State as a rule to be valid. Mogis v. Lyman-Richey Sand & Gravel Corp., 90 F.Supp. 251 (D. Neb. 1950).

**84-903 Agency; rules and regulations; publish.**

Each agency shall cause its rules and regulations to be published in such manner as the agency shall determine to bring, as far as practicable, the existence and scope of the rules and regulations to the attention of all persons affected thereby.

**Source:** Laws 1945, c. 255, § 3, p. 795; Laws 1987, LB 253, § 3.

**84-904 Repealed. Laws 1986, LB 992, § 11.**

**84-905 Agency; rules and regulations; availability required; price.**

Each agency shall make copies of the rules and regulations in force and effect for such agency available to all interested persons on request, at a price fixed to cover costs of publication and mailing, except that any such agency may furnish the same without charge if funds are available. No rule or regulation shall be effective unless copies thereof are available for distribution by the agency to persons requesting the same.

**Source:** Laws 1945, c. 255, § 5, p. 795; Laws 1947, c. 350, § 4, p. 1099; Laws 1967, c. 618, § 2, p. 2071; Laws 1969, c. 837, § 2, p. 3161; Laws 1973, LB 134, § 3; Laws 1987, LB 253, § 4.

#### **84-905.01 Rule or regulation; review by Attorney General.**

A copy of each amendment or rule or regulation to be adopted under the Administrative Procedure Act, prior to the date of filing with the Secretary of State, shall be submitted to the Attorney General for his or her consideration as to the statutory authority and constitutionality of such amendment or rule or regulation and his or her approval or disapproval thereof, including a determination as to whether or not the rule or regulation submitted is substantially different from the published proposed rule or regulation. If the amendment or rule or regulation to be filed is approved as to legality by the Attorney General, he or she shall so indicate with his or her stamp of approval which shall be dated and signed.

**Source:** Laws 1947, c. 350, § 5, p. 1099; Laws 1969, c. 837, § 3, p. 3161; Laws 1974, LB 604, § 3; Laws 1986, LB 992, § 3; Laws 1987, LB 253, § 5; Laws 1994, LB 446, § 17.

#### **84-906 Rule or regulation; when valid; presumption; limitation of action.**

(1) No rule or regulation of any agency shall be valid as against any person until five days after such rule or regulation has been filed with the Secretary of State. No rule or regulation required under the Administrative Procedure Act to be filed with the Secretary of State shall remain valid as against any person until the certified copy of the rule or regulation has been so filed on the date designated and in the form prescribed by the Secretary of State. The filing of any rule or regulation shall give rise to a rebuttable presumption that it was duly and legally adopted.

(2) A rule or regulation adopted after August 1, 1994, shall be invalid unless adopted in substantial compliance with the provisions of the act, except that inadvertent failure to mail a notice of the proposed rule or regulation to any person shall not invalidate a rule or regulation.

(3) Any action to contest the validity of a rule or regulation on the grounds of its noncompliance with any provision of the act shall be commenced within four years after the effective date of the rule or regulation.

(4) The changes made to the act by Laws 1994, LB 446, shall not affect the validity or effectiveness of a rule or regulation adopted prior to August 1, 1994, or noticed for hearing prior to such date.

(5) The changes made to the act by Laws 2005, LB 373, shall not affect the validity or effectiveness of a rule or regulation adopted prior to October 1, 2005, or noticed for hearing prior to such date.

**Source:** Laws 1945, c. 255, § 6, p. 796; Laws 1947, c. 350, § 6, p. 1100; Laws 1973, LB 134, § 4; Laws 1986, LB 992, § 4; Laws 1987, LB 253, § 6; Laws 1994, LB 446, § 18; Laws 2005, LB 373, § 2.

To be valid, administrative rules and regulations must be filed with the Secretary of State, and it is irrelevant whether or not an individual has actually been prejudiced by the agency's failure to do so. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998).

The failure of the Department of Motor Vehicles to comply with this section's requirements regarding the filing of rules with the Secretary of State is a denial of due process. *Gausman v. Department of Motor Vehicles*, 246 Neb. 677, 522 N.W.2d 417 (1994).

Rules of State Board of Education were not effective until filed. *School Dist. No. 228 v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

Due process is denied where the rules and regulations governing the administrative license revocation procedure were not on file with the Secretary of State for at least 5 days at the time of the arrest. *Dannehl v. Department of Motor Vehicles*, 3 Neb. App. 492, 529 N.W.2d 100 (1995).

Under former law, rates of carriers not filed with Secretary of State were invalid. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

**84-906.01 Official rulemaking or regulationmaking record; agency maintain; contents.**

(1) An agency shall maintain an official rulemaking or regulationmaking record for each rule or regulation it adopts or proposes by publication of a notice. The record and materials incorporated by reference shall be available for public inspection and shall be maintained for at least four years after the effective date of the rule or regulation.

(2) The record shall contain:

- (a) Copies of all publications with respect to the rule or regulation;
- (b) Copies of any portions of the public rulemaking or regulationmaking docket containing entries relating to the rule or regulation;
- (c) All written petitions, requests, submissions, and comments received by the agency and all other written materials prepared by or for the agency in connection with the proposal or adoption of the rule or regulation;
- (d) Any official transcript of oral presentations made in a proceeding about the proposed rule or regulation or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the hearing officer summarizing the contents of those presentations;
- (e) A copy of the rule or regulation and the concise explanatory statement filed with the Secretary of State;
- (f) All petitions for adoption of, exceptions to, amendments of, or repeal or suspension of, the rule or regulation;
- (g) A copy of any comments on the rule or regulation filed by a legislative committee; and
- (h) A description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons.

(3) Upon judicial review, the record required by this section shall constitute the official agency rulemaking or regulationmaking record with respect to a rule or regulation. Except as provided in section 84-907.04 or as otherwise required by law, the agency rulemaking or regulationmaking record need not constitute the exclusive basis for agency action on that rule or regulation or for judicial review thereof.

**Source:** Laws 1994, LB 446, § 19; Laws 2005, LB 373, § 3.

**84-906.02 Public comments; notice; agency; powers.**

In addition to seeking information by other methods and before publication of a notice under section 84-907, an agency is encouraged to and may solicit comments from the public on a subject matter of possible rule or regulation making by causing notice to be published in a newspaper of general circulation

of the subject matter and indicating where, when, and how persons may comment.

**Source:** Laws 1994, LB 446, § 20.

**84-906.03 Secretary of State; duties.**

It shall be the duty of the Secretary of State:

(1) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed to be designated the Nebraska Administrative Code.

(2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide re-search capabilities; and

(3) To distribute a current copy of existing rules and regulations as accepted by him or her as filed to the State Library and to each county law library of the State of Nebraska making a request for a copy of such rules and regulations; to distribute, on a regular basis, copies of all modifications or amendments to agency rules and regulations as accepted by him or her as filed to the State Library and to each county law library of the State of Nebraska which requests copies of all modifications or amendments; to distribute at least four current copies of any rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute on a regular basis at least four copies of all modifications or amendments to agency rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute a current copy of any existing rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing.

**Source:** Laws 1973, LB 134, § 6; Laws 1975, LB 267, § 1; Laws 1980, LB 712, § 1; Laws 1981, LB 130, § 2; Laws 1982, LB 784, § 1; Laws 1986, LB 992, § 5.

**84-906.04 Secretary of State; maintain docket for pending proceedings; contents.**

(1) The Secretary of State shall maintain a current public rulemaking or regulationmaking docket for each pending rulemaking or regulationmaking proceeding. A rulemaking or regulationmaking proceeding is pending from the time it is commenced by publication of a notice of proposed rule or regulation making to the time it is terminated by publication of a notice of termination or the rule or regulation becoming effective.

(2) For each rulemaking or regulationmaking proceeding, the docket shall indicate:

- (a) The subject matter of the proposed rule or regulation;
- (b) A citation to all published notices relating to the proceeding;
- (c) The name and address of agency personnel with whom people may communicate regarding the proposed rule or regulation;

- (d) Where written comments on the proposed rule or regulation may be inspected;
- (e) The time during which written comments may be made;
- (f) The names of persons who have submitted written comments on the proposed rule or regulation;
- (g) Where the description of the fiscal impact may be inspected and obtained;
- (h) The current status of the proposed rule or regulation and any agency determinations with respect thereto;
- (i) Any known timetable for agency decisions or other action in the proceeding;
- (j) The date of the rule's or regulation's adoption;
- (k) The date of the rule's or regulation's filing, indexing, and publication; and
- (l) The operative date of the rule or regulation if such date is later than the effective date prescribed in sections 84-906 and 84-911.

**Source:** Laws 1994, LB 446, § 16.

**84-906.05 Rule or regulation; judicial notice.**

- (1) Every court of this state may take judicial notice of any rule or regulation that is signed by the Governor and filed with the Secretary of State pursuant to section 84-906.
- (2) The court may inform itself of such rules and regulations in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

**Source:** Laws 1974, LB 604, § 5; Laws 1986, LB 992, § 6; Laws 1987, LB 253, § 7; Laws 1999, LB 320, § 1.

This court will take judicial notice of general rules and regulations established and published by Nebraska state agencies under authority of law. Raben v. Dittenber, 230 Neb. 822, 434 N.W.2d 11 (1989).

**84-906.06 Repealed. Laws 1982, LB 784, § 2.**

**84-907 Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure.**

No rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public. In addition to the requirements of section 84-906.01, draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State at the time of giving notice. The notice shall include: (1) A declaration of availability of such draft or work copies for public examination; (2) a short explanation of the purpose of the proposed rule or regulation or the reason for the amendment or repeal of the rule or regulation; and (3) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of

any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (2) and (3) of this section. Any agency adopting, amending, or repealing a rule or regulation may make written application to the Governor who may, upon receipt of a written showing of good cause, waive the notice of public hearing.

For purposes of this section, good cause shall include, but not be limited to, a showing by the agency that:

- (a) Compliance with the public notice requirements of this section would result in extreme hardship on the citizens of this state;
- (b) An emergency exists which must be remedied immediately; or
- (c) A timely filing or publication of notice of a public hearing was prevented by some unforeseeable event beyond the immediate control of the agency and that the parties affected have not and will not suffer material injury as a result of the agency's action.

Whenever public notice is waived, the agency shall, so far as practicable, give notice to the public of the proposed rule or regulation change and of the rule or regulation as finally adopted or changed.

**Source:** Laws 1953, c. 359, § 1, p. 1138; Laws 1977, LB 462, § 1; Laws 1978, LB 585, § 1; Laws 1980, LB 846, § 1; Laws 1986, LB 992, § 7; Laws 1987, LB 253, § 8; Laws 1987, LB 487, § 1; Laws 1994, LB 446, § 21; Laws 2005, LB 373, § 4.

This section is in pari materia with section 84-901. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

**84-907.01 Rule or regulation; public hearing; notice to subscribers.**

The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting, amending, or repealing any rule or regulation of any agency and shall provide such notice to such subscribers at cost to be assessed against each subscriber.

**Source:** Laws 1977, LB 462, § 2; Laws 1986, LB 992, § 8; Laws 1987, LB 253, § 9.

**84-907.02 Secretary of State; collection and disbursement of funds.**

The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out section 84-907.01.

**Source:** Laws 1977, LB 462, § 3; Laws 1986, LB 992, § 9.

**84-907.03 Secretary of State Administration Cash Fund; created; use; investment.**

There is hereby created the Secretary of State Administration Cash Fund. The fund shall consist of revenue received to defray costs as authorized in sections 84-901 to 84-908. The revenue shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the fund. The fund shall be used to (1) offset expenses incurred as a result of such sections and (2) administer the Address Confidentiality Act.

Any money in the 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.

**Source:** Laws 1994, LB 1194, § 8; Laws 1995, LB 7, § 148; Laws 2003, LB 228, § 15.

## Cross References

Address Confidentiality Act, see section 42-1201.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-907.04 Proposed rule or regulation; explanatory statement; contents; use.**

(1) At the time an agency finalizes a proposed rule or regulation and prior to submission to the Secretary of State, Attorney General, and Governor, the agency shall attach to the proposed rule or regulation a concise explanatory statement containing:

(a) Its reasons for adopting the rule or regulation;

(b) An indication of any change between the text of the proposed rule or regulation contained or referenced in the published notice and the text of the rule or regulation to be adopted, with the reasons for any change; and

(c) When procedural rules differ from the model rules, the agency's reasons why relevant portions of the model rules were impracticable under the circumstances.

(2) Only the reasons contained in the concise explanatory statement may be used by an agency as justifications for the adoption of the rule or regulation in any proceeding in which its validity is at issue.

**Source:** Laws 1994, LB 446, § 22.

**84-907.05 Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency.**

(1) An agency may not adopt a rule or regulation that is substantially different from the proposed rule or regulation contained or referenced in the published notice. An agency may terminate a rulemaking or regulationmaking proceeding and commence a new rulemaking or regulationmaking proceeding for the purpose of adopting a substantially different rule or regulation.

(2) In determining whether a rule or regulation is substantially different from the proposed rule or regulation contained or referenced in the published notice, the following shall be considered:

(a) The extent to which all persons affected by the adopted rule or regulation should have had adequate notice from the published notice and the proposed rule or regulation contained or referenced in the published notice that their interests would be affected;

(b) The extent to which the subject matter of the adopted rule or regulation or the issues determined by the rule or regulation are different from the subject matter or issues involved in the proposed rule or regulation contained or referenced in the published notice; and

(c) The extent to which the effects of the adopted rule or regulation differ from the effects of the proposed rule or regulation contained or referenced in the published notice had it been adopted instead.

**Source:** Laws 1994, LB 446, § 23.

**84-907.06 Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency applies to the Governor for a waiver of the notice of public hearing, the agency shall send to the Executive Board of the Legislative Council (a) a copy of the hearing notice required by section 84-907, (b) if applicable, a draft copy of the rule or regulation, and (c) the information provided to the Governor pursuant to section 84-907.09.

**Source:** Laws 1994, LB 446, § 24; Laws 2005, LB 373, § 5.

**84-907.07 Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.**

The chairperson of the Executive Board of the Legislative Council or committee staff member of the board shall refer materials received pursuant to section 84-907.06 for review (1) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (2) if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving. The committee or committee chairperson of such standing committee of the Legislature having subject matter jurisdiction may submit a written or oral statement at the public hearing on the rule or regulation or, if the Governor authorizes a waiver of the notice of public hearing, may submit a written statement to the agency and to the Secretary of State to be entered in the records relating to the rule or regulation.

**Source:** Laws 1994, LB 446, § 25; Laws 2005, LB 373, § 6.

**84-907.08 Petition to adopt a rule or regulation; form; procedure.**

Any person may petition an agency requesting the adoption of a rule or regulation. Each agency shall prescribe by rule or regulation the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) deny the petition in writing, stating its reasons therefor, (2) initiate rulemaking or regulationmaking proceedings in accordance with the Administrative Procedure Act, or (3) if otherwise lawful, adopt a rule or regulation.

**Source:** Laws 1994, LB 446, § 26.

**84-907.09 Adoption, amendment, or repeal of rule or regulation; provide information to Governor.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency applies to the Governor for a waiver of the notice of public hearing under section 84-907, the agency shall provide to the Governor for review (a) a

description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the authorizing statute or legislative bill, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

**Source:** Laws 2005, LB 373, § 1.

**Cross References**

Negotiated Rulemaking Act, see section 84-921.

**84-907.10 Member of the Legislature; complaint; procedure.**

(1) After an agency submits a copy of each amendment or rule or regulation pursuant to section 84-907.06, or any time thereafter, any member of the Legislature who feels aggrieved by the amendment, rule, or regulation or believes that the amendment, rule, or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, or is inconsistent with the legislative intent of the authorizing statute may file a complaint with the Chairperson of the Executive Board of the Legislative Council. The complaint shall explain in detail the member's contentions.

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the amendment or rule or regulation is consistent with legislative intent, (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the amendment or rule or regulation is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to

the amendment or rule or regulation. The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other sections of the Administrative Procedure Act.

**Source:** Laws 2005, LB 373, § 7.

**84-908 Rule or regulation; adoption; amendment; repeal; considerations; when effective.**

No adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a hearing has been set on such rule or regulation pursuant to section 84-907. When determining whether to approve the adoption, amendment, or repeal of any rule or regulation relating to an issue of unique interest to a specific geographic area, the Governor's considerations shall include, but not be limited to: (1) Whether adequate notice of hearing was provided in the geographic area affected by the rule or regulation. Adequate notice shall include, but not be limited to, the availability of copies of the rule or regulation at the time notice was given pursuant to section 84-907; and (2) whether reasonable and convenient opportunity for public comment was provided for the geographic area affected by the rule or regulation. If a public hearing was not held in the affected geographic area, reasons shall be provided by the agency to the Governor. Any rule or regulation properly adopted by any agency shall be filed with the Secretary of State.

**Source:** Laws 1953, c. 359, § 2, p. 1138; Laws 1972, LB 373, § 1; Laws 1974, LB 604, § 4; Laws 1975, LB 316, § 1; Laws 1978, LB 44, § 10; Laws 1986, LB 992, § 10; Laws 1987, LB 253, § 10; Laws 1987, LB 189, § 1.

Rate tariffs, and any rules of interpretation thereof, are excepted from requirements of filing with Secretary of State. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

**84-908.01 Repealed. Laws 1986, LB 992, § 11.**

**84-908.02 Repealed. Laws 1986, LB 992, § 11.**

**84-908.03 Repealed. Laws 1986, LB 992, § 11.**

**84-908.04 Repealed. Laws 1986, LB 992, § 11.**

**84-908.05 Repealed. Laws 1986, LB 992, § 11.**

**84-909 Agency; rules and regulations governing procedure; adoption.**

In addition to other requirements imposed by law:

(1) Each agency shall adopt rules and regulations governing the formal and informal procedures prescribed or authorized by the Administrative Procedure Act. Such rules and regulations shall include rules of practice before the agency together with forms and instructions; and

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules and regulations with descriptive statements of its procedures.

**Source:** Laws 1959, c. 456, § 2, p. 1511; Laws 1980, LB 846, § 2; Laws 1987, LB 253, § 11; Laws 1994, LB 446, § 33.

Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985).

This section only applicable to procedures which have not been specifically covered by statute. *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W.2d 783 (1969).

The provisions of Administrative Procedure Act may be considered with other legislation in determining whether due process of law has been afforded. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

The 1959 amendment to the act prescribing rules for administrative agencies did not contain more than one subject in violation of the Constitution. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

#### **84-909.01 Model rules of procedure; Attorney General; agency; duties.**

In accordance with the rulemaking and regulationmaking requirements of the Administrative Procedure Act, the Attorney General shall prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible and shall file the model rules with the Secretary of State. The model rules shall deal with all general functions and duties performed in common by several agencies. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking and regulationmaking requirements of the act. Any agency adopting a rule of procedure that differs from the model rules shall include in the explanatory statement provided for in section 84-907.04 a finding stating the reasons why the relevant portions of the model rules were impracticable under the circumstances.

**Source:** Laws 1994, LB 446, § 15.

#### **84-910 Repealed. Laws 1994, LB 446, § 40.**

#### **84-911 Validity of rule or regulation; declaratory judgment; procedure.**

(1) The validity of any rule or regulation may be determined upon a petition for a declaratory judgment thereon addressed to the district court of Lancaster County if it appears that the rule or regulation or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule or regulation in question.

(2) The court shall declare the rule or regulation invalid if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with the statutory procedures. For purposes of this subsection, statutory procedures shall not include procedures provided under the Negotiated Rulemaking Act.

**Source:** Laws 1959, c. 456, § 4, p. 1511; Laws 1987, LB 253, § 13; Laws 1994, LB 446, § 34.

#### **Cross References**

**Negotiated Rulemaking Act**, see section 84-921.

This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation, but does not confer jurisdiction for declaratory relief concerning judicial interpretation of a statute. *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997).

This section provides a limited statutory waiver of sovereign immunity and confers subject matter jurisdiction for a declaratory judgment concerning the validity of a state agency's rule or regulation. This section is limited to judicial determination of the validity of any rule or regulation of a state agency and does not confer jurisdiction for judicial resolution of a factual ques-

tion pertaining to the merits of a controversy. *Riley v. State*, 244 Neb. 250, 506 N.W.2d 45 (1993).

Under this section, which allows for a declaratory judgment on the validity of an administrative rule, such a ruling is discretionary with the court. A court may refuse to enter a declaratory judgment where it would not end or resolve the

controversy. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).

A court may refuse to enter a declaratory judgment on the validity of an administrative rule when the petition essentially presents a claim against the state for money. *Millard School District v. State Department of Education*, 202 Neb. 707, 277 N.W.2d 71 (1979).

**84-912 Repealed. Laws 1994, LB 446, § 40.**

**84-912.01 Petition for declaratory order; issuance by agency; duties; effect.**

(1) Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule or regulation adopted in accordance with subsection (2) of this section. An agency may not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(2) Each agency shall issue rules or regulations that provide for: (a) The form, contents, and filing of petitions for declaratory orders; (b) the procedural rights of persons in relation to the petitions; (c) the disposition of the petitions; and (d) notice to necessary parties for matters set for hearing or specified proceedings. The rules or regulations shall describe the classes of circumstances in which the agency will not issue a declaratory order and be consistent with the public interest and with the general policy of the Administrative Procedure Act to facilitate and encourage agency issuance of reliable advice.

(3) Persons who qualify for intervention and file timely petitions for intervention according to agency rules and regulations may intervene in proceedings for declaratory orders.

(4) Within thirty days after receipt of a petition for a declaratory order, an agency shall, in writing:

(a) Issue an order or agree to issue a declaratory order by a specified time declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings; or

(c) Decline to issue a declaratory order, stating the reasons for its action.

(5) A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(6) A declaratory order shall have the same status and binding effect as any other order issued in a contested case. A declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

(7) If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, the petition shall be deemed to have been denied.

**Source:** Laws 1994, LB 446, § 27.

**84-912.02 Petition for intervention; hearing officer or designee; grant petition; conditions; powers and duties; order.**

(1) A hearing officer or designee shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer or designee, with copies mailed to all parties named in the hearing officer's notice of the hearing, at least five days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer or designee determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer or designee, at least twenty-four hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The hearing officer or designee may modify the order at any time, stating the reasons for the modification. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

**Source:** Laws 1994, LB 446, § 28.

#### **84-912.03 Tax Equalization and Review Commission; exemption.**

Sections 84-912.01 and 84-913 to 84-919 do not apply to the Tax Equalization and Review Commission.

**Source:** Laws 1995, LB 490, § 190; Laws 2004, LB 973, § 68.

#### **Cross References**

Tax Equalization and Review Commission Act, see section 77-5001.

#### **84-913 Contested cases; notice of hearing; record; transcript.**

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument with respect thereto.

The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purpose of rehearing, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default. Each agency shall adopt appropriate rules and regulations for notice and hearing in contested cases.

**Source:** Laws 1959, c. 456, § 6, p. 1512; Laws 1969, c. 838, § 1, p. 3162; Laws 1987, LB 253, § 15.

Where the Nebraska Liquor Control Commission failed to provide the appellant with notice as required under this section and the commission's own regulations, the appellant was denied due process, and as a result of such denial, the commission's decision with regard to the appellant's liquor license did not conform to the law. *Lariat Club v. Nebraska Liquor Control Comm.*, 267 Neb. 179, 673 N.W.2d 29 (2004).

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. *Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev.*, 251 Neb. 852, 560 N.W.2d 436 (1997).

On objection to application for liquor license, where hearing is required, the matter becomes a contested case under section 84-901(3), and notice to applicant of the issues is necessary. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The procedural rules to be applied are those in effect at time of hearing or proceeding, not those in effect when the act or violation is charged to have taken place. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

Department of Banking required to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971).

In contested case, common carriers are entitled to present argument. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

In hearing before the Liquor Control Commission where no notice of hearing is required, this section would not be applicable. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Notice of hearing in a contested case is required to state the issues involved. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization & Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

In contested case before administrative board, notice and hearing are required. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

**84-913.01 Hearing officer; prehearing conference; procedure.**

(1) The hearing officer designated to conduct the hearing may determine, subject to the agency's rules and regulations, whether a prehearing conference will be conducted. If the conference is conducted:

(a) The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

(b) The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

(2) The notice shall include:

(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(d) A statement of the time, place, and nature of the prehearing conference;

(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference; and

(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act.

The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

**Source:** Laws 1994, LB 446, § 29.

**84-913.02 Hearing officer; prehearing conference; powers and duties; orders.**

(1) The hearing officer shall conduct the prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(2) If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

**Source:** Laws 1994, LB 446, § 30.

**84-913.03 Hearing officer; prehearing conference and hearing; how conducted.**

The hearing officer may conduct all or part of the prehearing conference and the hearing by telephone, television, or other electronic means if each participant in the conference or hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. This section does not apply to a prehearing conference or a hearing held under sections 60-498.01 to 60-498.04.

**Source:** Laws 1994, LB 446, § 31; Laws 2003, LB 209, § 20.

Telephonic hearings under this section are permitted when a formal "rules of evidence" hearing is requested pursuant to section 84-914(1). Kimball v. Nebraska Dept. of Motor Vehicles, 255 Neb. 430, 586 N.W.2d 439 (1998).

**84-913.04 Proceedings; limitation on participation.**

(1) A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(2) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or

in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(3) If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as, investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

(4) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

(5) A person may serve as hearing officer at successive stages of the same contested case.

**Source:** Laws 1994, LB 446, § 32.

The Legislature specifically barred only prosecutors, investigators, and advocates from participating as hearing officers in administrative hearings. *City of Lincoln v. Central Platte NRD*, 263 Neb. 141, 638 N.W.2d 839 (2002).

cers, or assisting hearing officers, in administrative hearings. *Saunders Cty. v. Metropolitan Utilities Dist.-A*, 11 Neb. App. 138, 645 N.W.2d 805 (2002).

In this section, the Legislature has barred only prosecutors, investigators, and advocates from participating as hearing offi-

**84-914 Contested cases; evidence; procedure; ex parte communications.**

In contested cases:

(1) An agency may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An agency shall give effect to the rules of privilege recognized by law. Any party to a formal hearing before an agency, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefor. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may administer oaths and issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court;

(3) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency. Parties shall be notified either before or during the hearing or by

reference in preliminary reports or otherwise of material so noticed. Parties shall be afforded an opportunity to contest facts so noticed. The record shall contain a written record of everything officially noticed. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it; and

(6)(a) No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

(b) No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

(c) No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(d) The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subdivisions (6)(a) through (c) of this section shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

(e) The prohibitions of subdivision (6) of this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency’s rules of procedure.

(f) The prohibitions contained in subdivisions (6)(a) and (b) of this section shall not apply to ex parte communications to or from an elected official. However, the disclosure requirements contained in subdivision (6)(d) of this section shall apply to ex parte communications to or from an elected official.

**Source:** Laws 1959, c. 456, § 7, p. 1513; Laws 1967, c. 618, § 3, p. 2072; Laws 1987, LB 253, § 16; Laws 1994, LB 414, § 136; Laws 1994, LB 446, § 35.

- 1. Rules of evidence
- 2. Evidentiary and trial procedures
- 3. Judicial notice
- 4. Miscellaneous

**1. Rules of evidence**

The “rules of evidence applicable in district court” are the Nebraska Evidence Rules codified in Chapter 27 of the Nebraska Revised Statutes. *Kimball v. Nebraska Dept. of Motor Vehicles*, 255 Neb. 430, 586 N.W.2d 439 (1998).

The Board of Nursing is not bound by the law of evidence unless a party so requests. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in

accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).

The Administrative Procedure Act controls the appeal of prison disciplinary cases, but not the conduct of an initial prison disciplinary hearing. An inmate is not entitled to the application of the rules of evidence at a prison disciplinary committee hearing. *Dailey v. Nebraska Dept. of Corr. Servs.*, 6 Neb. App. 919, 578 N.W.2d 869 (1998).

**2. Evidentiary and trial procedures**

Evidentiary and trial procedures herein govern proceeding before Nebraska Power Review Board on application for approval of agreement between public power districts limiting areas in which and customers to whom electrical energy would be furnished at wholesale. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974).

Section details evidentiary and trial procedures for all administrative agencies. *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W.2d 783 (1969).

**3. Judicial notice**

In a contested case, all evidence in possession of the agency, of which it desires to avail itself, shall be made a part of the record and applicant is also entitled to notice of any facts which will be judicially noticed by the commission. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

The Nebraska State Racing Commission could properly take judicial notice that the electrical device in possession of jockey was designed to increase or decrease the speed of a horse. *Durousseau v. Nebraska State Racing Commission*, 194 Neb. 288, 231 N.W.2d 566 (1975).

**4. Miscellaneous**

Pursuant to subsection (5) of this section, a district court, in its de novo review of a disciplinary adjudication by the Department of Health and Human Services, properly took into consid-

eration the expert opinions of the Director of Health and Human Services because the director was not substituting his expert knowledge for evidence in the record of the hearing; rather, the director used his experience and knowledge in evaluating the facts in the record. Pursuant to subsection (5) of this section, notification of parties is required when an agency intends to take notice of facts within its specialized knowledge; however, notification of parties is not required when an agency merely utilizes its expertise in evaluating evidence presented to it. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Policy behind this statute is to give full and fair warning of Public Service Commission's intention to take notice of a matter so as to avoid prejudice or surprise. In this case method of taking notice may have been technically improper; nonetheless, taking notice caused no unfair surprise or prejudice to the parties and therefore was permissible. In re *Application of ATS Mobile Telephone*, 213 Neb. 403, 330 N.W.2d 123 (1983).

Presumed that Department of Banking offered only records or documents in its possession of which it desired to avail itself, and any not offered were not considered. *Douglas County Bank v. Department of Banking*, 187 Neb. 545, 192 N.W.2d 401 (1971).

Study based on information compiled from unsworn statements and involving many judgment decisions wherein basic data used was not available at the time of hearing could not be used to sustain action of State Board of Equalization and Assessment. *County of Sarpy v. State Board of Equalization & Assessment*, 185 Neb. 760, 178 N.W.2d 765 (1970); *County of Sioux v. State Board of Equalization & Assessment*, 185 Neb. 741, 178 N.W.2d 754 (1970).

An agency is required to make an official record containing all the factual information or evidence required to be determined after an agency hearing. *County of Lancaster v. State Board of Equalization & Assessment*, 180 Neb. 497, 143 N.W.2d 885 (1966); *County of Brown v. State Board of Equalization & Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

**84-915 Contested cases; orders; findings of fact; conclusions of law; notification.**

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

**Source:** Laws 1959, c. 456, § 8, p. 1513; Laws 1987, LB 253, § 17.

- 1. Sufficiency
- 2. Miscellaneous

**1. Sufficiency**

In order to provide a clear basis for an order granting or denying an instream flow application, the Director of Water Resources is required to discuss each of the elements listed in section 46-2,115. However, the director is not required to include, as part of his public interest analysis, to discuss forgone uses. An order which does no more than state its ultimate conclusion -- "application granted" or "application denied" -- clearly fails to provide a sufficient basis for the order. An order which fails to make findings on each required element also fails to provide a sufficient basis for the order. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

Conclusions of law found sufficient when considered with findings of fact. *Douglas County Bank v. Department of Banking*, 187 Neb. 545, 192 N.W.2d 401 (1971).

Findings of fact in order entered by Director of Motor Vehicles are sufficient if they consist of a concise statement of the conclusions upon each contested issue of fact. *Doran v. Johns*, 186 Neb. 321, 182 N.W.2d 900 (1971).

Findings of fact must show validity of order; failure to make findings of fact and conclusions of law in implied consent proceeding caused order to be set aside on appeal. *Prigge v. Johns*, 184 Neb. 103, 165 N.W.2d 559 (1969).

Every decision under this act must be in writing, and shall make findings of fact and conclusions of law. *County of Lancas-*

## § 84-915

## STATE OFFICERS

ter v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

State Railway Commission is required in a final order to make findings of fact and conclusions of law. Yellow Cab Co. v. Nebraska State Railway Commission, 176 Neb. 711, 127 N.W.2d 211 (1964).

Under this section, the State Railway Commission is required to make findings of fact and conclusions of law in cases before it. Yellow Cab Co. v. Nebraska State Railway Commission, 175 Neb. 150, 120 N.W.2d 922 (1963).

Findings made by State Railway Commission were sufficient to comply with this section. Young v. Morgan Drive Away, Inc., 171 Neb. 784, 107 N.W.2d 752 (1961).

### 2. Miscellaneous

Chapter 84, article 9, applies to agencies of state government, not to city zoning board of adjustment. South Maple Street Assn. v. Board of Adjustment, 194 Neb. 118, 230 N.W.2d 471 (1975).

State Railway Commission may correct findings to comply with this section without giving notice of hearing. Petroleum Transp. Co. v. All Class I Rail Carriers, 173 Neb. 564, 114 N.W.2d 34 (1962).

On appeal from order of State Railway Commission, time commenced to run from date of mailing of notice of order. Denver Chicago Transp. Co., Inc. v. Poulson, 172 Neb. 862, 112 N.W.2d 410 (1961).

Order of railway commission that fails to make findings of ultimate facts is irregular and will be set aside upon appeal. Basin Truck Co. v. All Class I Rail Carriers, 172 Neb. 28, 108 N.W.2d 388 (1961).

### **84-915.01 Official record of contested cases; agency maintain; contents; use.**

(1) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

(2) The agency record shall consist only of:

(a) Notices of all proceedings;

(b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;

(c) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

(d) The final order.

(3) Except as otherwise provided by law, the physical custody of the agency record shall be maintained by the agency. The agency shall permit the parties to inspect the agency record and obtain copies of the agency record.

(4) Except as otherwise provided by law, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

**Source:** Laws 1994, LB 446, § 36; Laws 2006, LB 1115, § 41.

### **84-916 Act; intent.**

The Administrative Procedure Act is intended to constitute an independent act establishing minimum administrative procedure for all agencies.

**Source:** Laws 1959, c. 456, § 10, p. 1514; Laws 1987, LB 253, § 18.

The purpose of this act is to establish a minimum administrative procedure. County of Lancaster v. State Board of Equalization & Assessment, 180 Neb. 497, 143 N.W.2d 885 (1966); County of Brown v. State Board of Equalization & Assessment,

180 Neb. 487, 143 N.W.2d 896 (1966); County of Blaine v. State Board of Equalization & Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

### **84-917 Contested case; appeal; procedure.**

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be

deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

- (i) In violation of constitutional provisions;
- (ii) In excess of the statutory authority or jurisdiction of the agency;
- (iii) Made upon unlawful procedure;
- (iv) Affected by other error of law;
- (v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

**Source:** Laws 1963, c. 531, § 1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, § 102; Laws 1987, LB 253, § 19; Laws 1988, LB 352, § 186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42; Laws 2008, LB1014, § 69.  
Operative date July 18, 2008.

**1. Applicability of section**  
**2. Review by court**  
**3. Miscellaneous**

**1. Applicability of section**

Sections 84-917 to 84-919 govern appeals from rulings of the State Racing Commission. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

This section covers appeal to district court by the children of a crime victim from a denial of their application to the Nebraska Crime Victim's Reparations Board. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).

Review of orders of the Department of Public Welfare is governed by the criteria of this section. *Gosney v. Department of Public Welfare*, 206 Neb. 137, 291 N.W.2d 708 (1980).

The State Board of Education hearing appeals under section 79-1103.05 acts in a quasi-judicial capacity and, therefore either party may appeal its decision under this section or under section 25-1901. *Richardson v. Board of Education*, 206 Neb. 18, 290 N.W.2d 803 (1980).

Section 71-1,132.34 provides a specific method of appeal to the district court for the Board of Nursing and whether this section affords an alternative method is not decided. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

This section governs appeal by licensee from order of suspension by the Nebraska Liquor Control Commission. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).

This section governs proper venue of an appeal from a license suspension ordered by the Nebraska Liquor Control Commission. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

**2. Review by court**

It constitutes plain error for a district court to conduct a review under subsection (6)(a) of this section where the proceedings for review of an administrative hearing are initiated after July 1, 1989. *Zwygart v. State*, 270 Neb. 41, 699 N.W.2d 362 (2005).

An application to the Nebraska Quality Jobs Board is not a "contested case" requiring review pursuant to this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

Pursuant to subsection (5)(a) of this section, the standard of review that courts without a jury must apply to clearly contested cases that are quasi-judicial in nature filed on or after July 1, 1989, is de novo on the record of the agency. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

Subsection (3) of this section provides that upon the filing of a petition for review, an agency may order a stay or the court may order a stay. Such stay may only be granted, however, when the court finds that (1) the applicant is likely to prevail when the court finally disposes of the matter, (2) without relief, the appellant will suffer irreparable injuries, (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings, and (4) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action in the circumstances. Under subsection (5)(a) of this section, when a petition instituting proceedings for review under the Administrative Procedure Act is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency. *Miller v. Horton*, 253 Neb. 1009, 574 N.W.2d 112 (1998).

Pursuant to subsection (5) of this section, the district court's review of a decision of the Department of Insurance is de novo on the record. *Norwest Corp. v. State, Dept. of Insurance*, 253 Neb. 574, 571 N.W.2d 628 (1997).

Pursuant to subsection (5)(a) of this section, in reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact which was not presented

to the agency because the taking of such evidence would impermissibly expand the court's statutory scope of review "de novo on the record of the agency". *Wolgammott v. Abramson*, 253 Neb. 350, 570 N.W.2d 818 (1997).

On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of this section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

Under subsection (2)(a) of this section, if the agency whose decision is appealed from is not a party of record, it is a jurisdictional prerequisite that the petitioner serve a copy of the petition and a request for preparation of the official record upon the agency within 30 days of the filing of the petition. *Payne v. Nebraska Dept. of Corr. Servs.*, 249 Neb. 150, 542 N.W.2d 694 (1996).

Pursuant to this section, a district court is required to conduct a true de novo review of agency determinations on the record of the agency. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).

Where the proceedings for review of an administrative hearing are initiated in the district court after July 1, 1989, the review will be conducted by the district court "without a jury de novo on the record of the agency" as required by this section. *Styskal v. Wright*, 246 Neb. 513, 519 N.W.2d 543 (1994).

Under subsection (5)(a) of this section, an appeal to the district court of a decision by the State Personnel Board is reviewed on the record of the agency if the petition was filed in district court before July 1, 1989. *Nebraska Dept. of Correctional Servs. v. Hansen*, 238 Neb. 233, 470 N.W.2d 170 (1991).

In an appeal from an administrative agency taken under this section of the Administrative Procedure Act, the district court's review is limited to determining whether the agency's action is (1) in violation of constitutional provisions, (2) in excess of the statutory authority or jurisdiction of the agency, (3) made upon unlawful procedure, (4) affected by other errors of law, (5) unsupported by competent, material, and substantial evidence in view of the entire record as made on review, or (6) arbitrary or capricious; however, the Nebraska Supreme Court reviews the district court's decision de novo on the record made before the agency. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

Although the Supreme Court reviews an agency's decision under the Administrative Procedure Act de novo on the record, a district court's standard of review is prescribed by subsection (6) of this section. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).

Under this section, where a judicial review is made of the decision of an administrative agency, the reviewing court is authorized to consider the validity of the agency's criterion in order to assess whether the decision was within the statutory authority or jurisdiction of the agency. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).

Review under sections 84-917 to 84-919 by the Supreme Court is limited to a review of the record created before the administrative agency in question. *Adams Central School Dist. v. Deist*, 214 Neb. 307, 334 N.W.2d 775 (1983).

The district court review of order of State Personnel Board is limited to record of agency. Therefore, objections to appellant's requests in district court for discovery were properly sustained. *Devine v. Dept. of Public Institutions*, 211 Neb. 113, 317 N.W.2d 783 (1982).

In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).

Review under the Administrative Procedure Act is on the record of the agency only. *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).

A district court conducting a review under subsection (5)(a) of this section cannot base a reversal of the agency decision under review on grounds not raised in the petition for review. *Moore v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 8 Neb. App. 69, 589 N.W.2d 861 (1999).

The filing of the petition and the service of summons pursuant to this section are the two actions necessary to establish the jurisdiction of the district court to review the final decision of an administrative agency. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).

Pursuant to subsection (2)(a) of this section, timely service of a request for the preparation of the official record upon the agency is mandatory to confer jurisdiction on the district court. *Payne v. Nebraska Dept. of Corr. Servs.*, 3 Neb. App. 969, 536 N.W.2d 656 (1995).

In order to perfect an appeal under the Administrative Procedure Act, the party instituting the proceedings for review must file a petition in the district court for the county where the action is taken within 30 days after the service of the final decision by the agency, and cause summons to be served within 30 days of the filing of the petition. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

### 3. Miscellaneous

Where the Public Service Commission has the authority to set conditions on certifications, resolve disputes, investigate complaints, issue orders, and enforce orders, it is not a neutral factfinding body. In re Application of Metropolitan Util. Dist., 270 Neb. 494, 704 N.W.2d 237 (2005).

Neither section 60-6,208 nor subsection (2)(a) of this section provides that its jurisdictional provisions are exclusive. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

Subsection (5)(a) of this section does not violate the separation of powers doctrine, and *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976), is overruled insofar as it implies that this statute violates the separation of powers doctrine. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).

For a district court to have jurisdiction over an administrative agency's decision, that decision must be final. *Big John's Billiards, Inc. v. Balka*, 254 Neb. 528, 577 N.W.2d 294 (1998).

Subsection (5)(b) of this section does not empower a district court to retain jurisdiction over an action remanded by the court to an administrative agency for a new hearing. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

The phrase "county where the action is taken" in subsection (2)(a) of this section refers to the site of the first adjudicated hearing of a disputed claim. *Essman v. Nebraska Law Enforcement Training Ctr.*, 252 Neb. 347, 562 N.W.2d 355 (1997).

The phrase "action taken," as used in subsection (2) of this section, is defined by the site of the first adjudicated hearing of a disputed claim. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).

The filing of the petition and the service of summons are the two actions that are necessary to establish jurisdiction pursuant to the Administrative Procedure Act. The filing of the transcript is not jurisdictional. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).

This section makes no provision for reconsideration of the State Racing Commission's final decision so as to toll the thirty-day appeal time within which appellants had the opportunity to

avail themselves of a judicial challenge of the commission's decision. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).

The Tax Commissioner is not a person aggrieved and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment. *Karnes v. Wilkinson Mfg.*, 220 Neb. 150, 368 N.W.2d 788 (1985).

Filing of a transcript, which is the duty of the state agency, is not jurisdictional for appeal under this section, and the appellant is not entitled to reversal of the agency decision merely because of the agency's failure to timely file a proper transcript, and the district court may order a supplemental transcript. Where appeals are taken under this section, the certified transcript as prepared by the administrative agency and transmitted to the court is considered to be before the court and need not be formally offered into evidence by either party. *Maurer v. Weaver*, 213 Neb. 157, 328 N.W.2d 747 (1982).

An appeal from an order of the director of the Department of Motor Vehicles is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of § 60-420 or subsection (2) of this section is not an action against the state within the meaning of § 24-319 et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).

On appeal from State Board of Education order that county board make tuition payments for Nebraska school children attending school in South Dakota, the district court having proper jurisdiction is the one in which the state board took the action in question; that court being Lancaster County District Court. Bd. of Ed. of Keya Paha County v. State Board of Education, 212 Neb. 448, 323 N.W.2d 89 (1982).

If, after a district court review, an administrative agency's decision which had fallen into legal error is remanded to the agency, new evidence can be received by the agency if it is necessary, in the agency's judgment, to discharge its duty. *Phelps County Savings Co. v. Dept. of Banking & Finance*, 211 Neb. 683, 320 N.W.2d 99 (1982).

This section, in 1978, did not provide a right of appeal from a declaratory ruling of an administrative agency issued pursuant to section 84-912, R.R.S.1943. But see 1979 amendment to section 84-912, which provides such appeal. *Gretna Public School v. State Board of Education*, 201 Neb. 769, 272 N.W.2d 268 (1978).

Orders of the Department of Public Welfare made pursuant to section 68-1016, may be reviewed by petition in error as well as by appeal. *Downer v. Ihms*, 192 Neb. 594, 223 N.W.2d 148 (1974).

Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. *Gateway Bank v. Department of Banking*, 192 Neb. 109, 219 N.W.2d 211 (1974).

Where errors assigned require review of evidence they cannot be considered on either appeal or error proceedings in absence of a bill of exceptions. *Lanc v. Douglas County Welfare Administration*, 189 Neb. 651, 204 N.W.2d 387 (1973).

For district court to obtain jurisdiction under this section, petition must be filed and summonses must be issued during the appeal period. *Norris P.P. Dist. v. State ex rel. Jones*, 183 Neb. 489, 161 N.W.2d 869 (1968).

The rebuttable presumption of validity regarding actions of administrative agencies which results in the burden of proof resting on the party challenging the agency's actions does not apply in cases involving the termination of the employment of a public employee. *Trackwell v. Nebraska Dept. of Admin. Servs.*, 8 Neb. App. 233, 591 N.W.2d 95 (1999).

## 84-918 District court decision; appeal.

(1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.

(2) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

**Source:** Laws 1963, c. 531, § 2, p. 1665; Laws 1987, LB 253, § 20; Laws 1989, LB 213, § 2; Laws 1991, LB 732, § 158.

- 1. Appeal from district court
- 2. Appeal from administrative agency
- 3. Miscellaneous

**1. Appeal from district court**

On an appeal under the Administrative Procedure Act, an appellate court reviews the judgment of the district court for errors appearing on the record and will not substitute its factual findings for those of the district court where competent evidence supports those findings. When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Inner Harbour Hospitals v. State*, 251 Neb. 793, 559 N.W.2d 487 (1997).

Appeals from a district court decision involving petitions filed on or after July 1, 1989, are reviewed for errors appearing on the record. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).

Under subsection (2) of this section, the standard of review on appeal from a declaratory judgment action filed under the Administrative Procedure Act in the district court prior to July 1, 1989, is de novo on the record. *Loewenstein v. State*, 244 Neb. 82, 504 N.W.2d 800 (1993).

An appellate court, in reviewing a judgment of the district court for errors appearing on the record, will not substitute its factual findings for those of the district court where competent evidence supports those findings. *Davis v. Wright*, 243 Neb. 931, 503 N.W.2d 814 (1993).

Appeals from the district court under the Administrative Procedure Act to the Supreme Court are reviewed de novo on the record if the district court proceeding was commenced prior to July 1, 1989. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).

Supreme Court reviews de novo on the record an appeal from the district court's review of a decision of the Nebraska Equal Opportunity Commission. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

Where district court had only cold record before it, the rule pertaining to Supreme Court's consideration of the opportunity of the trial court in equity to observe the witnesses is inapplicable. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49 (1973).

A final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Boruch v. Nebraska Dept. of Health and Human Servs.*, 11 Neb. App. 713, 659 N.W.2d 848 (2003).

**2. Appeal from administrative agency**

The appropriate standard of review for the Supreme Court in an appeal from an administrative agency's decision is found in this section, which prescribes a review of an agency's decision de novo on the record without the limitation imposed on the district court under former section 84-917(6)(e) and (6)(f). *Golden Five v. Department of Soc. Serv.*, 229 Neb. 148, 425 N.W.2d 865 (1988).

The Supreme Court's review of an administrative agency's decision is de novo on the record; as such, the court makes independent findings of fact without reference to those made by the agency whose action is being reviewed. *Dieter v. State*, 228 Neb. 368, 422 N.W.2d 560 (1988); *Department of Health v. Grand Island Health Care*, 223 Neb. 587, 391 N.W.2d 582 (1986).

The Supreme Court reviews an administrative agency's decision de novo on the record. *Department of Health v. Lutheran Hosp. & Homes Soc.*, 227 Neb. 116, 416 N.W.2d 222 (1987); *Zybach v. State*, 226 Neb. 396, 411 N.W.2d 627 (1987); *City of Omaha v. Omaha Police Union Local 101*, 222 Neb. 197, 382 N.W.2d 613 (1986).

The Supreme Court's review of an agency's decision under the Administrative Procedure Act is de novo on the record. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).

In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

**3. Miscellaneous**

In conducting its de novo review under the provisions of this section, the Nebraska Supreme Court is required to make independent findings of fact without reference to those made by the tribunal from which the appeal was taken. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

**84-919 Act; exclusive means of judicial review.**

Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

**Source:** Laws 1963, c. 531, § 3, p. 1666; Laws 1987, LB 253, § 21; Laws 1988, LB 352, § 187.

**84-919.01 Negotiated Rulemaking Act; use by agency.**

Prior to the formal rulemaking procedure of section 84-907, agencies may use the procedures of the Negotiated Rulemaking Act to permit the direct participation of affected persons in the development of proposed rules and regulations. Negotiated rulemaking may be used to resolve controversial issues prior to the formal rulemaking of the Administrative Procedure Act. To be effective, such proposed rules and regulations shall be adopted pursuant to the Administrative Procedure Act in the form proposed by the negotiated rulemaking committee or as amended by the agency.

**Source:** Laws 1994, LB 446, § 37.

**Cross References**

**Negotiated Rulemaking Act**, see section 84-921.

**84-920 Act, how cited.**

Sections 84-901 to 84-920 shall be known and may be cited as the Administrative Procedure Act.

**Source:** Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38; Laws 1995, LB 490, § 191; Laws 2005, LB 373, § 8.

(b) NEGOTIATED RULEMAKING ACT

**84-921 Act, how cited.**

Sections 84-921 to 84-932 shall be known and may be cited as the Negotiated Rulemaking Act.

**Source:** Laws 1994, LB 446, § 1.

**84-922 Purpose of act.**

The purpose of the Negotiated Rulemaking Act is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act. It is the intent of the Legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process of the Administrative Procedure Act. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent formal rulemaking process. This section shall not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

**Source:** Laws 1994, LB 446, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

**84-923 Terms, defined.**

For purposes of the Negotiated Rulemaking Act:

- (1) Agency shall have the same meaning as in section 84-901;
- (2) Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition;
- (3) Convenor shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure;
- (4) Facilitator shall mean a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decisionmaking authority;
- (5) Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner;
- (6) Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee;
- (7) Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;
- (8) Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character; and
- (9) Rule shall mean rule or regulation as defined in section 84-901.

**Source:** Laws 1994, LB 446, § 3.

**84-924 Negotiated rulemaking committee; establishment; agency director; use of negotiated rulemaking procedure; determination; considerations; convenor; duties.**

- (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:
  - (a) There is a need for a rule;
  - (b) There are a limited number of identifiable interests that will be significantly affected by the rule;
  - (c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:
    - (i) Can adequately represent the interests identified; and
    - (ii) Are willing to negotiate in good faith to reach a consensus on the proposed rule;
  - (d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the Administrative Procedure Act;

(f) The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency in the formal rulemaking process of the Administrative Procedure Act.

(2) An agency may use the services of a convenor to assist in making the determination of need pursuant to subsection (1) of this section and to assist the agency in:

(a) Identifying persons who will be significantly affected by a proposed rule; and

(b) Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

(3) The convenor shall report findings and make recommendations to the agency. Upon request of the agency, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convenor shall be made available to the public upon request.

**Source:** Laws 1994, LB 446, § 4.

**Cross References**

Administrative Procedure Act, see section 84-920.

**84-925 Petition to use negotiated rulemaking committee; procedure; exception.**

(1) Except as provided in subsection (2) of this section, any person may petition an agency to request the use of a negotiated rulemaking committee in the development or revision of a rule. Each agency shall prescribe the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (a) deny the petition in writing stating its reasons therefor or (b) initiate the negotiated rulemaking procedure.

(2) A person committed to or otherwise incarcerated in a Department of Correctional Services facility may not petition the Department of Correctional Services to request the use of a negotiated rulemaking committee.

**Source:** Laws 1994, LB 446, § 5.

**84-926 Negotiated rulemaking committee established; agency; duties; Secretary of State; duties.**

(1) If an agency decides to establish a negotiated rulemaking committee, the agency shall:

(a) Give notice to the Secretary of State; and

(b) Publish the notice in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(2) The notice shall include:

- (a) An announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;
- (b) A description of the subject and scope of the rule to be developed and the issues to be considered;
- (c) A list of interests likely to be significantly affected by the proposed rule;
- (d) A list of the persons proposed to represent the affected interests and the agency;
- (e) A proposed schedule for completing the work of the committee; and
- (f) An explanation of how a person may apply for or nominate another person for membership on the committee.

(3) The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of an agency's intent to establish a negotiated rulemaking committee and shall provide such notice to such subscribers at a cost to be assessed against each subscriber. The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out the notification required by this subsection.

(4) The agency shall provide a period of at least thirty days for the submission of comments upon and applications for membership on a negotiated rulemaking committee.

**Source:** Laws 1994, LB 446, § 6.

**84-927 Negotiated rulemaking committee; establishment; notice of decision; agency support; termination.**

(1) If, after considering comments and applications for membership on the negotiated rulemaking committee submitted pursuant to section 84-926, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted pursuant to section 84-926, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice of the decision not to establish a negotiated rulemaking committee in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance and support.

(4) A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the agency pursuant to the Administrative Procedure Act unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

**Source:** Laws 1994, LB 446, § 7.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**84-928 Negotiated rulemaking committee; membership; procedure.**

(1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2) of this section.

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination shall be submitted to the negotiated rulemaking committee and shall include:

(a) The name of the petitioner or nominee and a description of the interests the person represents;

(b) Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition, a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

**Source:** Laws 1994, LB 446, § 8.

**84-929 Negotiated rulemaking committee; powers and duties; consensus; procedure; report; contents.**

(1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

**Source:** Laws 1994, LB 446, § 9.

**84-930 Facilitator; selection; duties.**

(1) An agency may nominate a person to serve as a facilitator for the negotiations of the negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a negotiated rulemaking committee shall:

- (a) Preside at the meetings of the committee in an impartial manner;
- (b) Impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and
- (c) Manage the keeping of minutes and records.

**Source:** Laws 1994, LB 446, § 10.

**84-931 Convenor or facilitator; contract authorized; state employee; disqualification; members of negotiated rulemaking committee; expenses; per diem; grants or gifts.**

(1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convenor or facilitator for a negotiated rulemaking committee or may use the services of a state employee to act as a convenor or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convenor or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion shall be dropped from further consideration.

(3) Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, an agency may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in sections 81-1174 to 81-1177 and a reasonable per diem rate of compensation if:

(a) The committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) The agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process if:

(a) Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) The grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) There is consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

**Source:** Laws 1994, LB 446, § 11.

**84-932 Agency action; judicial review; limitation; negotiated rule; judicial review; treatment.**

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review. Nothing in this section shall bar judicial review if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking prior to formal adoption pursuant to the Administrative Procedure Act and is later subject to judicial review shall not be accorded greater deference by a court than a rule which is the product of the rulemaking procedure of the Administrative Procedure Act alone.

**Source:** Laws 1994, LB 446, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 10

BASIC WORKWEEK

Section

- 84-1001. Basic workweek; state officers; departments; hours required; exceptions; holidays; payment; rules and regulations.
- 84-1002. Basic workweek; state institutions; hours required.
- 84-1003. Basic workweek; staggering of hours.
- 84-1004. Basic workweek; authority of Governor; time when effective.
- 84-1005. Basic workweek; persons excepted.

**84-1001 Basic workweek; state officers; departments; hours required; exceptions; holidays; payment; rules and regulations.**

(1) All state officers and heads of departments and their deputies, assistants, and employees, except permanent part-time employees, temporary employees, and members of any board or commission not required to render full-time service, shall render not less than forty hours of labor each week except any week in which a paid holiday may occur.

(2) Regular work by such employees shall not be performed on paid holidays, Saturdays, or Sundays except in case of an emergency or when otherwise ordered or deemed essential by the Governor.

(3) For purposes of this section, paid holidays shall include all of the days enumerated in section 25-2221 and all days declared by law or proclamation of the President or Governor to be holidays.

(4) All such holidays shall be paid holidays except as provided in subsection (5) of this section. For purposes of this section, employees shall include permanent and temporary employees. A permanent employee shall mean an employee in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis, and a temporary employee shall mean an employee appointed to a full-time or part-time position for a limited period of time to accomplish a specific task. If any such holiday falls on Sunday, the

following Monday shall be a holiday. If any such holiday falls on Saturday, the preceding Friday shall be a holiday.

(5) Employees who are required to work on any holiday shall be granted either a workday of compensatory time off or be paid for the time worked in accordance with existing state and federal statutes, except that temporary employees shall not be eligible for paid holidays and if required to work on a holiday shall be paid for the time worked at their normal rate of pay. Permanent part-time employees shall be eligible for paid holidays on a pro rata basis. In order to receive pay for such holiday an employee, whether part time or full time, must not have been absent without pay on the workday immediately preceding or immediately following the holiday unless excused by his or her supervisor. The Director of Personnel shall adopt and promulgate such rules and regulations as are necessary to administer this section.

**Source:** Laws 1957, c. 398, § 1, p. 1364; Laws 1969, c. 839, § 1, p. 3164; Laws 1974, LB 1001, § 1; Laws 1992, Third Spec. Sess., LB 14, § 30.

**84-1002 Basic workweek; state institutions; hours required.**

All heads of institutions and their deputies, assistants, and employees, except part-time employees, shall render not less than forty hours of labor each week.

**Source:** Laws 1957, c. 398, § 2, p. 1364.

**84-1003 Basic workweek; staggering of hours.**

To effectuate the purposes of sections 84-1001 and 84-1002, any state officer or the head of a department or institution may stagger the hours and days of work of the employees supervised by him except where the salary is set as provided by law.

**Source:** Laws 1957, c. 398, § 3, p. 1364.

**84-1004 Basic workweek; authority of Governor; time when effective.**

The Governor shall have authority, after conferring with the employing officers concerned and with the employees, to make sections 84-1001 to 84-1005 effective to employments in any board, commission, department, or institution at any time on or after January 1, 1958.

**Source:** Laws 1957, c. 398, § 4, p. 1364.

Sections 84-1001 to 84-1005, R.R.S.1943, have not been made applicable to members of the State Patrol. Roth v. Lieske, 189 Neb. 216, 201 N.W.2d 846 (1972).

**84-1005 Basic workweek; persons excepted.**

Subsection (2) of section 84-1001 shall not apply to (1) employees of the University of Nebraska, the state colleges, the Nebraska Brand Committee, or the Nebraska Oil and Gas Conservation Commission, (2) the Superintendent of Law Enforcement and Public Safety, his or her deputies and assistants, members of the Nebraska State Patrol, or carrier enforcement officers designated under section 60-1303, or (3) the employees of the Division of Motor Fuels of the office of the Tax Commissioner who render service on such days and maintain such hours as the Governor may designate, except that when employ-

ees are required to work on any day designated as a paid holiday, subsections (4) and (5) of section 84-1001 shall apply.

**Source:** Laws 1957, c. 398, § 5, p. 1365; Laws 1965, c. 572, § 1, p. 1860; Laws 1967, c. 617, § 2, p. 2070; Laws 1969, c. 840, § 1, p. 3166; Laws 1969, c. 839, § 2, p. 3165; Laws 1985, LB 395, § 14; Laws 1989, LB 247, § 17.

## ARTICLE 11

### GENERAL EMERGENCY SUCCESSION ACT

#### Cross References

#### Constitutional provision:

Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.

#### Section

- 84-1101. Act, how cited.
- 84-1102. Declaration of policy.
- 84-1103. Terms, defined.
- 84-1104. Sections; applicability.
- 84-1105. Sections; provisions, when invoked.
- 84-1106. Officers; alternates; appointment; qualifications.
- 84-1107. Officers; alternate; notice of appointment.
- 84-1108. Officers; alternate; oath.
- 84-1109. Officers; alternate; appointment to only one office.
- 84-1110. Officers; alternate; changing appointment; duty to be informed.
- 84-1111. Officers; alternate; assumption of duties; length of service.
- 84-1112. Officers; alternates; termination.
- 84-1113. Officers; alternates; no compensation; acting officer; compensation.
- 84-1114. Officers; alternate; acting officer; title.
- 84-1115. Officers; alternates; assumption of power; disputes; how settled.
- 84-1116. Officers; alternates; acting officer; acts; validity.
- 84-1117. Repealed. Laws 1963, c. 340, § 1.

#### **84-1101 Act, how cited.**

Sections 84-1101 to 84-1116 shall be known and may be cited as the Nebraska General Emergency Succession Act.

**Source:** Laws 1959, c. 457, § 1, p. 1515.

#### **84-1102 Declaration of policy.**

Because of the existing possibility of an attack of unprecedented size and destructiveness upon the United States; and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of government of the state and in the governments of all political subdivisions in the state; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended; the Legislature finds and declares it to be necessary to provide for emergency interim succession to governmental offices of all types of this state and of its various political subdivisions in the event the incumbents thereof are or become unavailable to perform the functions and duties of such offices; and to enable the governing bodies or the electors of political subdivisions in the state to invoke the provisions of sections 84-1101 to 84-1116 therein.

**Source:** Laws 1959, c. 457, § 2, p. 1515.

#### **84-1103 Terms, defined.**

As used in sections 84-1101 to 84-1116, and unless otherwise clearly required by the context, the following terms, and the customary derivatives thereof, have the respective meanings and connotations shown:

(1) An attack means any action or series of actions by an enemy of the United States, causing, or which may cause, substantial injury or damage to civilian persons and property in the United States in any manner, whether by sabotage, or by the use of bombs, missiles or shellfire, or by atomic, radiological, chemical, bacteriological or biological means, or by other weapons or processes;

(2) The terms office and officer include all public offices and officers in the state government and in the governments of all local political subdivisions in the state, whose powers and duties are defined by the Constitution of Nebraska or statutes of the state, or by the charters, orders, resolutions, or other legal enactments of the political subdivisions concerned; and without regard to whether the functions and duties of any such office or officer are primarily of an executive, legislative, or judicial nature, or a combination thereof. If otherwise within the scope of the foregoing definition, an office may belong to a governmental body or group, such as a board, a commission, a council, a court or quasi-judicial tribunal, etc., in which event each member thereof is an officer;

(3) The terms state office and state officer include all offices and officers of the central state government, and district and sectional offices and officers not within the immediate jurisdiction or control of any political subdivision of the state; except as pertains to the Governor and to members of the Legislature;

(4) A deputy means any deputy, assistant, or subordinate to an officer, normally serving with and under him;

(5) A successor means a person who, in event of a legal vacancy in any office, and in pursuance to law, has been regularly elected or appointed to fill such vacancy, and has duly qualified therefor;

(6) An alternate or alternate officer means a person who is or has been duly appointed, as provided in sections 84-1101 to 84-1116, as a possible emergency interim successor to the powers and duties, but not to the office, of an officer;

(7) An acting officer means a person who actually is serving as an emergency interim successor to the powers and duties, but not to the office, or an officer, as provided by sections 84-1101 to 84-1116. In other words, an alternate officer becomes and is an acting officer when he assumes, and while he is exercising and performing, the powers and duties of an officer, as provided by sections 84-1101 to 84-1116;

(8) The term available, when applied to an officer, a successor, a deputy, or an alternate or acting officer, means that the individual referred to is legally, physically, and mentally qualified and able to exercise the powers and perform the duties of such office. Conversely, the term unavailable means that he is unable to exercise the powers and discharge the duties of the office concerned, either by virtue of circumstances which by general law would create a legal vacancy in the office, or by virtue of transitory causes, whether or not such circumstances would create a legal vacancy in the office concerned under any other provision of law;

(9) The term political subdivisions includes counties, townships, cities, villages, districts, authorities, and other public corporations and entities, whether

organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska, or by virtue of charters, corporate articles, or other legal instruments executed under authority of such constitution or laws;

(10) The term obligated subdivision means a political subdivision wherein the provisions of sections 84-1101 to 84-1116 shall be invoked as provided in section 84-1105. The term obligated officers includes all state officers and all officers of obligated subdivisions; and

(11) A resolve means an ordinance, resolution, resolve, or other proper proceedings, duly enacted by the governing body of a political subdivision in accordance with the Constitution of Nebraska or general laws of this state, the charter or corporate articles of such political subdivision, the usual and customary practices of such governing body, or any combination thereof.

**Source:** Laws 1959, c. 457, § 3, p. 1515.

**84-1104 Sections; applicability.**

From and after the passage, approval, and taking effect of sections 84-1101 to 84-1116, their provisions shall apply to and shall be binding upon all state offices and officers.

**Source:** Laws 1959, c. 457, § 4, p. 1518.

**84-1105 Sections; provisions, when invoked.**

In any political subdivision in which it shall be deemed necessary and advisable that the provisions of sections 84-1101 to 84-1116 apply to the offices and officers therein, the governing body thereof is hereby authorized and empowered to declare, by resolve, that it is necessary to invoke the provisions of sections 84-1101 to 84-1116 within such subdivision. In such event, the provisions of sections 84-1101 to 84-1116 shall become effective in such subdivision, and shall apply to and be binding upon all offices and officers therein, from and after the thirtieth day following the passage and approval of such resolve. Any initiative or referendum process which, by virtue of the Constitution of Nebraska or laws of this state or the charter or other corporate articles of such subdivision, is applicable in such subdivision, likewise shall be applicable to the action above prescribed in this section; *Provided*, notwithstanding any provision of general law or charter to the contrary, when a resolve has been duly enacted by the governing body, as prescribed in this section, its subsequent reference to the electors of the subdivision shall not operate to suspend the effectiveness of such resolve, and it shall remain in force and effect unless and until it is duly disapproved by the electors.

**Source:** Laws 1959, c. 457, § 5, p. 1518.

**84-1106 Officers; alternates; appointment; qualifications.**

As soon as possible after sections 84-1101 to 84-1116 shall go into effect or shall become applicable in his case, and in no event later than thirty days thereafter, each obligated officer shall appoint, by title or name, no fewer than three nor more than seven alternates to the powers and duties of his office, and shall specify the order of their succession; *Provided*, that if any such officer has more than seven deputies, such maximum limitation shall not apply in his case. The alternates, or some of them, may be selected from among the officer's deputies, but this need not be done unless, in a particular case, the deputy is

entitled by law or charter to succeed to such powers and duties in event of the officer's absence or disability. In no instance shall any person be appointed or serve as alternate who would be ineligible legally to be elected or appointed to, or serve in, the office concerned; *Provided*, that no constitutional, statutory, or other legal provision prohibiting any official from holding another office during the term for which he has been elected or appointed shall apply to an alternate or acting officer. After making such appointments the officer shall review them periodically and shall make such revisions and additional appointments from time to time as may be necessary to insure that there are at all times at least three alternates who have qualified as provided in section 84-1108 and are able to act.

**Source:** Laws 1959, c. 457, § 6, p. 1518.

**84-1107 Officers; alternate; notice of appointment.**

On making every such appointment, the officer promptly shall notify the appointee directly, and shall concurrently give notice to the public official, to be known as the filing authority, whose office is designated by law as the filing place or repository of the officer's official oath or undertaking, or oath and undertaking, which notice in each instance shall include the appointee's name and address, and his rank in order of succession. The officer likewise shall notify both the alternate concerned and the filing authority promptly of his removal of any alternate, or change in his order of succession. All such data in the hands of the filing authority shall at all times be open to public inspection.

**Source:** Laws 1959, c. 457, § 7, p. 1519.

**84-1108 Officers; alternate; oath.**

Within thirty days after receiving notice of his appointment, each alternate shall take and subscribe, before any official empowered by law to administer oaths, the same oath or affirmation as is required by law for the officer to whose powers and duties he is designated to succeed, and shall file the same in the office of the filing authority, and his failure so to do within the prescribed period will operate to forfeit his rights under such appointment. No alternate, qualified as above, shall be required to execute any other oath or undertaking or to comply with any other legal formality as a prerequisite to his assumption of the powers and duties to which he is designated to succeed.

**Source:** Laws 1959, c. 457, § 8, p. 1519.

**84-1109 Officers; alternate; appointment to only one office.**

No person shall accept appointment as alternate to more than one office. No person who has accepted appointment as a standby legislator shall, without first resigning therefrom, accept appointment as an alternate officer, nor shall any person who has accepted an appointment as an alternate officer, without first resigning therefrom, accept appointment as a standby legislator. No person, while regularly serving as judge of a court of record, shall accept appointment as an alternate to another office.

**Source:** Laws 1959, c. 457, § 9, p. 1519.

**84-1110 Officers; alternate; changing appointment; duty to be informed.**

Until such time as an alternate is authorized to exercise the powers and discharge the duties of an officer, as provided in sections 84-1101 to 84-1116, he shall serve as alternate at the pleasure of the officer by whom he was appointed, and may be removed or replaced thereby, or his rank in order of succession changed, at any time, with or without cause. Every alternate shall keep himself generally informed as to the powers, functions, duties, procedures, practices, and current business of the officer to whose powers and duties he is designated to succeed, and all officers shall assist their alternates in keeping themselves so informed.

**Source:** Laws 1959, c. 457, § 10, p. 1520.

**84-1111 Officers; alternate; assumption of duties; length of service.**

In the event that any obligated officer is or becomes unavailable after an attack, the alternate who is highest on the order of succession among those appointed to succeed him, and who is duly qualified therefor and is available, shall forthwith assume the powers and duties of his office. Any such acting officer shall continue to serve as such until the expiration of the then current term of the officer concerned, but not after the officer himself or a qualified successor thereto becomes available and resumes or assumes the office. The subsequent availability of an alternate who was higher than him on the order of succession, but was unavailable when he assumed the powers and duties of the office, shall not terminate or affect his right to continue as acting officer; *Provided*, that if an alternate who was not a deputy in the same office at the time of his appointment becomes acting officer, any higher-ranking alternate who was such a deputy, and who later becomes available, shall become acting officer in his stead.

**Source:** Laws 1959, c. 457, § 11, p. 1520.

**84-1112 Officers; alternates; termination.**

The authority of alternates to become or to continue to serve as acting officers, as provided in sections 84-1101 to 84-1116, shall not exist unless and until an attack upon the United States actually has occurred; and, except as otherwise provided in this section, shall terminate upon the expiration of two years after the inception of the attack. The Governor, by proclamation, or the Legislature, by resolution approved by the Governor, may terminate the authority of alternates at some earlier date, and from time to time may extend or restore such authority, upon a finding that events and circumstances at that time render the extension or restoration necessary; *Provided*, that no single extension or restoration shall be for a period of more than one year.

**Source:** Laws 1959, c. 457, § 12, p. 1520.

**84-1113 Officers; alternates; no compensation; acting officer; compensation.**

No alternate officer, as such, shall receive any pay or compensation by virtue of his appointment or appointment and qualification, or shall enjoy any of the rights or privileges of the office to whose powers and duties he is designated to succeed. An acting officer, however, shall receive the same compensation and enjoy the same perquisites as would be received and enjoyed by the officer himself if present and available; *Provided*, that if, during the same period or any portion thereof, he is entitled to receive, and does receive, pay or compen-

sation as deputy in the same office or as holder of another state or local office, the amount of the latter shall be deducted from the amount he otherwise would receive as acting officer; *and provided further*, that nothing herein shall be construed as affecting the compensation or perquisites of the officer concerned, if living.

**Source:** Laws 1959, c. 457, § 13, p. 1521.

**84-1114 Officers; alternate; acting officer; title.**

The specific title of an alternate or acting officer shall correspond to that of the officer to the powers and duties of whom he is designated to succeed or has succeeded; for example, Alternate, or Acting, Secretary of State; Alternate, or Acting, District Judge, ..... District; Alternate, or Acting, Commissioner, ..... County; Alternate, or Acting, Clerk, City of .....

**Source:** Laws 1959, c. 457, § 14, p. 1521.

**84-1115 Officers; alternates; assumption of power; disputes; how settled.**

(1) Disputes of fact with respect to the right of an alternate to assume the powers and duties of an office, or to the right of an acting officer to continue to serve as such, shall be determined and adjudicated by the following named officials, whose decision in each instance shall be final:

(a) As to all state officers, by the Governor; *Provided*, that the Governor, within his sound discretion, may delegate this responsibility to another state officer or officers, except as to disputes relating to the officer or officers so designated; and

(b) As to all other obligated officers, by the district judge of the district in which the political subdivision concerned, or the major portion thereof, is located; or, if there are two or more district judges in that district, by the senior thereof.

(2) Subsection (1) of this section shall not apply to a dispute of fact relative to the office of Governor, or to the office of any member of the Legislature. Nor shall it be construed as limiting or affecting in any manner the right of a regularly elected or appointed officer or successor to have adjudicated in the courts, as provided by the Constitution of Nebraska and laws of this state, his authority to assume or hold such office.

**Source:** Laws 1959, c. 457, § 15, p. 1521.

**84-1116 Officers; alternates; acting officer; acts; validity.**

Nothing in sections 84-1101 to 84-1116 shall be construed as preventing or otherwise affecting the appointment or election, in the manner provided by law, of a successor to any office wherein a legal vacancy exists. But, after an attack, and so long thereafter as the authority of alternates to become or to continue to serve as acting officers continues to exist as provided in section 84-1112, whenever a qualified alternate has succeeded to the powers and duties of any office, and so long as he is serving as acting officer therein, no action of mandamus or quo warranto, or any legal proceedings of like nature, shall be brought or shall be entertained in the courts of this state, during the term for which the officer concerned was elected or appointed, against the official or

government body responsible under general law for filling vacancies in said office, to compel the appointment of a successor.

**Source:** Laws 1959, c. 457, § 16, p. 1522.

**84-1117 Repealed. Laws 1963, c. 340, § 1.**

**ARTICLE 12**

**PUBLIC RECORDS**

(a) RECORDS MANAGEMENT ACT

Section	
84-1201.	Legislative intent.
84-1202.	Terms, defined.
84-1203.	Secretary of State; State Records Administrator; duties.
84-1204.	State Records Board; established; members; duties; meetings.
84-1205.	Board; network manager; duties.
84-1205.01.	Technical advisory committee; established; membership.
84-1205.02.	Board; establish fees.
84-1205.03.	State agency; electronic access to public records; approval required; when; one-time fee; report; when required; fees.
84-1205.04.	Contract; public bidding required; when.
84-1205.05.	Board; reports.
84-1205.06.	Public record; copies; media; denial of request; effect; appeal.
84-1206.	Administrator; duties; powers.
84-1207.	State executive head; duties.
84-1207.01.	Agency head; designate records officer; duties.
84-1208.	Administrator; preservation duplicates of essential records; process used; exception.
84-1209.	Administrator; storage of records and preservation duplicates; charges.
84-1210.	Administrator; records; maintain; temporary removal; inspection; copies certified.
84-1211.	Records; confidential; protection.
84-1212.	Program for selection and preservation of essential records; review, periodically.
84-1212.01.	Records retention and disposition schedule; review by State Archivist; approval; review by administrator.
84-1212.02.	Records retention and disposition schedule; disposal of records pursuant to schedule; report.
84-1213.	Records; property of government; protected; willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of; violation; penalty.
84-1213.01.	Records; violation; prosecute.
84-1214.	Agency; disposition of records; procedure.
84-1214.01.	State Archives; authority; duties.
84-1215.	Nonrecord material; destruction; procedure; personal and political papers; preservation.
84-1216.	Administrator; rules and regulations; promulgate.
84-1217.	Agencies; preservation of records; administrator; advise.
84-1218.	Political subdivisions; preservation of records; administrator; advise and assist; rules and regulations.
84-1219.	Administrator; biennial report; copies; furnish.
84-1220.	Act, how cited.
84-1221.	Repealed. Laws 1989, LB 18, § 10.
84-1222.	Purchase of microfilm system or equipment; approval; property of State Records Administrator.
84-1223.	Micrographic production, processing, and viewing equipment; property of administrator; exception; credit.
84-1224.	State Records Administrator; microfilm; micrographic equipment; powers.

Section	
84-1225.	State Records Administrator; micropublishing and computer output microfilm services; charges.
84-1226.	Records Management Micrographics Services Revolving Fund; created; credits; expenditures; rental.
84-1227.	Records Management Cash Fund; created; use; investment.

## (b) ELECTRONIC RECORDS

84-1228.	Electronic record constituting permanent record; requirements.
----------	--

## (a) RECORDS MANAGEMENT ACT

**84-1201 Legislative intent.**

The Legislature declares that:

(1) Programs for the systematic and centrally correlated management of state and local records will promote efficiency and economy in the day-to-day record-keeping activities of state and local governments and will facilitate and expedite governmental operations;

(2) Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed; wherefore it is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information;

(3) The increasing availability and use of computers is creating a growing demand for electronic access to public records, and agencies should use new technology to enhance public access to public records;

(4) There must be public accountability in the process of collecting, sharing, disseminating, and accessing public records;

(5) The Legislature has oversight responsibility for the process of collecting, sharing, disseminating, and providing access, including electronic access, to public records and establishing fees for disseminating and providing access;

(6) Several state agencies, individually and collectively, are providing electronic access to public records through various means, including gateways; and

(7) There is a need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records.

**Source:** Laws 1961, c. 455, § 1, p. 1385; Laws 1997, LB 590, § 3.

**84-1202 Terms, defined.**

For purposes of the Records Management Act, unless the context otherwise requires:

(1) Agency means any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches of state government or of the government of any local political subdivision;

(2) Agency head means the chief or principal official or representative in any such agency or the presiding judge of any court, by whatever title known. When

an agency consists of a single official, the agency and the agency head are one and the same;

(3) State agency means an agency of the state government;

(4) Local agency means an agency of a local political subdivision, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(5) Local political subdivision means any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Local political subdivision does not include a city of the metropolitan class or a district or other unit which by law is considered an integral part of state government;

(6) Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

(7) State record means a record which normally is maintained within the custody or control of a state agency or any other record which is designated or treated as a state record according to general law;

(8) Local record means a record of a local political subdivision or of any agency thereof unless designated or treated as a state record under general law;

(9) Essential record means a state or local record which is within one or the other of the following categories and which shall be preserved pursuant to the Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A but which contain information necessary to protect the rights and interests of persons or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

(10) Preservation duplicate means a copy of an essential record which is used for the purpose of preserving the record pursuant to the act;

(11) Disaster means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of humans, including an enemy of the United States;

(12) Administrator means the State Records Administrator;

(13) Board means the State Records Board;

(14) Electronic access means collecting, sharing, disseminating, and providing access to public records electronically;

(15) Gateway means any centralized electronic information system by which public records are provided through dial-in modem or continuous link;

(16) Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except

when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files; and

(17) Network manager means an individual, a private entity, a state agency, or any other governmental subdivision responsible for directing and supervising the day-to-day operations and expansion of a gateway.

**Source:** Laws 1961, c. 455, § 2, p. 1385; Laws 1969, c. 841, § 1, p. 3167; Laws 1979, LB 559, § 1; Laws 1980, LB 747, § 1; Laws 1991, LB 25, § 2; Laws 1991, LB 81, § 12; Laws 1997, LB 590, § 4; Laws 1999, LB 87, § 99.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

### **84-1203 Secretary of State; State Records Administrator; duties.**

The Secretary of State is hereby designated the State Records Administrator, hereinafter called the administrator. The administrator shall establish and administer, within and for state and local agencies, (1) a records management program which will apply efficient and economical methods to the creation, utilization, maintenance, retention, preservation, and disposal of state and local records, (2) a program for the selection and preservation of essential state and local records, (3) establish and maintain a depository for the storage and service of state records, and advise, assist, and govern by rules and regulations the establishment of similar programs in local political subdivisions in the state, and (4) establish and maintain a central microfilm agency for state records and advise, assist, and govern by rules and regulations the establishment of similar programs in state agencies and local political subdivisions in the State of Nebraska.

**Source:** Laws 1961, c. 455, § 3, p. 1387; Laws 1969, c. 841, § 2, p. 3169; Laws 1977, LB 520, § 1; Laws 1979, LB 559, § 2.

### **84-1204 State Records Board; established; members; duties; meetings.**

(1) The State Records Board is hereby established. The board shall:

(a) Advise and assist the administrator in the performance of his or her duties under the Records Management Act;

(b) Provide electronic access to public records through a gateway;

(c) Develop and maintain a gateway or electronic network for accessing public records;

(d) Provide appropriate oversight of a network manager;

(e) Approve reasonable fees for electronic access to public records pursuant to sections 84-1205.02 and 84-1205.03 and submit contracts for public bidding pursuant to section 84-1205.04;

(f) Have the authority to enter into or renegotiate agreements regarding the management of the network in order to provide citizens with electronic access to public records;

(g) Explore ways and means of expanding the amount and kind of public records provided through the gateway or electronic network, increasing the utility of the public records provided and the form in which the public records

are provided, expanding the base of users who access public records electronically, and, if appropriate, implementing changes necessary for such purposes;

(h) Explore technological ways and means of improving citizen and business access to public records and, if appropriate, implement the technological improvements;

(i) Explore options of expanding the gateway or electronic network and its services to citizens and businesses;

(j) Have the authority to grant funds to political subdivisions for the development of programs and technology to improve electronic access to public records by citizens and businesses consistent with the act; and

(k) Perform such other functions and duties as the act requires.

(2) In addition to the administrator, the board shall consist of:

(a) The Governor or his or her designee;

(b) The Attorney General or his or her designee;

(c) The Auditor of Public Accounts or his or her designee;

(d) The State Treasurer or his or her designee;

(e) The Director of Administrative Services or his or her designee;

(f) Three representatives appointed by the Governor to be broadly representative of banking, insurance, and law groups; and

(g) Three representatives appointed by the Governor to be broadly representative of libraries, the general public, and professional members of the Nebraska news media.

(3) The administrator shall be chairperson of the board. Upon call by the administrator, the board shall convene periodically in accordance with its rules and regulations or upon call by the administrator.

(4) Six members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(5) The representatives appointed by the Governor shall serve staggered three-year terms as the Governor designates and may be appointed for one additional term. Members of the board shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1961, c. 455, § 4, p. 1387; Laws 1969, c. 841, § 3, p. 3170; Laws 1979, LB 559, § 3; Laws 1989, LB 18, § 7; Laws 1997, LB 590, § 5; Laws 2003, LB 257, § 1.

**84-1205 Board; network manager; duties.**

(1) The board may employ or contract with a network manager. A network manager may include an individual, a private entity, a state agency, or another governmental subdivision. The board shall prepare criteria and specifications for the network manager in consultation with the Department of Administrative Services. Such criteria shall include procedures for submission of proposals by an individual, a private entity, a state agency, or another governmental subdivision. Selection of the network manager shall comply with all applicable procedures of the department. The board may negotiate and enter into a

contract with the selected network manager which provides the duties, responsibilities, and compensation of the network manager.

(2) The network manager shall direct and supervise the day-to-day operations and expansion of a gateway or electronic network to make public records available electronically, including the initial phase of operations necessary to make the gateway operational. The network manager shall attend meetings of the board, keep a record of all gateway, electronic network, and related operations, which shall be the property of the board, maintain and be the custodian of all financial and operational records, and annually update and revise the business plan for the gateway or electronic network, in consultation with and under the direction of the board.

(3) The board shall finance the operation and maintenance of the gateway or electronic network from revenue generated pursuant to sections 52-1316, 60-483, and 84-1205.02 and subsection (d) of section 9-525, Uniform Commercial Code.

**Source:** Laws 1997, LB 590, § 6; Laws 1999, LB 550, § 48.

**84-1205.01 Technical advisory committee; established; membership.**

The board shall establish a technical advisory committee to assist it in the performance of its duties. The committee shall consist of individuals who have technical experience and expertise in electronic access and information technology. The committee shall have three members. The members shall include a representative from a state agency that is responsible for providing public records, a representative from the information management services division of the office of Chief Information Officer, and a representative from the computer services group of the Legislative Council.

**Source:** Laws 1997, LB 590, § 7; Laws 1998, LB 924, § 52; Laws 2006, LB 921, § 11.

**84-1205.02 Board; establish fees.**

(1) Until July 1, 2001, except as provided in sections 49-509, 52-1316, and 60-483 and section 9-411, Uniform Commercial Code, the board may establish reasonable fees for electronic access to public records through the gateway.

(2) Beginning on July 1, 2001, except as provided in sections 49-509, 52-1316, and 60-483 and article 9, Uniform Commercial Code, the board may establish reasonable fees for electronic access to public records through the gateway.

(3) The fees shall not exceed the statutory fee for distribution of the public records in other forms. Any fee established by the board under this section may be collected for an eighteen-month period and shall terminate at the end of such period unless enacted by the Legislature. Any fees collected under this section shall be deposited in the Records Management Cash Fund.

**Source:** Laws 1997, LB 590, § 8; Laws 1998, LB 924, § 53; Laws 1999, LB 550, § 49; Laws 2000, LB 534, § 7.

**84-1205.03 State agency; electronic access to public records; approval required; when; one-time fee; report; when required; fees.**

(1) Any state agency other than the courts or the Legislature desiring to enter into an agreement to or otherwise provide electronic access to public records

through a gateway for a fee shall make a written request for approval to the board. The request shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The board shall take action on such request in accordance with section 84-1205.02 and after a public hearing within thirty days after receipt. The board may request a presentation or such other information as it deems necessary from the requesting state agency.

(2) A state agency other than the courts or the Legislature may charge a fee for electronic access to public records without the board's approval for a one-time sale in a unique format. The purchaser may object to the fee in writing to the board, and the one-time fee shall then be subject to approval by the board according to the procedures and guidelines established in sections 84-1205 to 84-1205.04.

(3) Courts or the Legislature providing electronic access to public records through a gateway for a fee shall make a written report. The report shall be filed with the State Records Board by the State Court Administrator for the courts and the chairperson of the Executive Board of the Legislative Council for the Legislature. The report shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The State Records Board may request a presentation or such other information as it deems necessary. The courts and the Legislature shall take into consideration any recommendation made by the State Records Board with respect to such fees.

(4) Courts and the Legislature may charge a fee for electronic access to public records for a one-time sale in a unique format without providing a report to the board as required under subsection (3) of this section.

**Source:** Laws 1997, LB 590, § 9; Laws 1998, LB 924, § 54; Laws 2005, LB 525, § 1.

#### **84-1205.04 Contract; public bidding required; when.**

By September 15, 1997, the board shall submit for public bidding any contract made by a state agency prior to June 7, 1997, for providing electronic access to public records for a fee through a gateway. Any such contract in existence on June 7, 1997, shall be terminated on January 31, 1998, unless sooner voided or terminated by order of a court of competent jurisdiction.

**Source:** Laws 1997, LB 590, § 10.

#### **84-1205.05 Board; reports.**

The board shall provide quarterly reports to the Executive Board of the Legislative Council and Nebraska Information Technology Commission on its activities pursuant to sections 84-1205 to 84-1205.04.

**Source:** Laws 1997, LB 590, § 11; Laws 1998, LB 924, § 55.

**84-1205.06 Public record; copies; media; denial of request; effect; appeal.**

(1) If a state agency is required to provide a copy of public records on request, a person requesting a copy of a public record may elect to obtain it in any and all media in which the agency is capable of providing it. No request for a copy of a public record in a particular medium shall be denied on the ground that the custodian has made or prefers to make the public record available in another medium.

(2) A state agency may deny a request for a copy of a public record in a particular medium if:

(a) The request is unreasonably complicated;

(b) The request specifies a medium not regularly used by the state agency and would cause undue time or expense for the state agency to comply with the request; or

(c) The public record is available in the requested medium from another source at a fee equal to or lower than any fee that would be charged by the state agency.

(3) A state agency may not deny a request for paper copies of public records.

(4) The requester may appeal a decision by a state agency to deny a request for a copy of a public record in a particular medium in writing to the board. The denial shall then be subject to the approval of the board based upon its determination of the state agency's compliance with this section.

(5) If a state agency provides copies of public records in a particular medium, the state agency shall provide notice not less than ninety calendar days prior to discontinuing such practice. The notice shall be published at least three times in a newspaper of general circulation.

**Source:** Laws 1997, LB 590, § 12.

**84-1206 Administrator; duties; powers.**

(1) With due regard for the functions of the agencies concerned, and with such guidance and assistance from the board as may be required, the administrator shall:

(a) Establish standards, procedures, and techniques for the effective management of public records;

(b) Make continuing surveys of paperwork operations, and recommend improvements in current records management practices, including but not limited to the economical use of space, equipment, and supplies employed in creating, maintaining, storing, preserving, and servicing records;

(c) Establish standards for the preparation of schedules providing for the retention of records of continuing value, and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal, historical, or fiscal value to warrant their further retention; and

(d) Obtain from the agencies concerned such reports and other data as are required for the proper administration of the records management program including organizational charts of agencies concerned.

(2) The administrator shall establish standards for designating essential records, shall assist agencies in identifying essential records, and shall guide them in the establishment of programs for the preservation of essential records.

(3) The administrator may advise and assist members of the Legislature and other officials in the maintenance and disposition of their personal or political papers of public interest and may provide such other services as are available to state and local agencies, within the limitation of available funds.

**Source:** Laws 1961, c. 455, § 6, p. 1388; Laws 1969, c. 841, § 4, p. 3171; Laws 1976, LB 641, § 1; Laws 1980, LB 747, § 2.

**84-1207 State executive head; duties.**

In accordance with general law, and with such rules and regulations as shall be promulgated by the administrator and the board as provided in section 84-1216, such head of any state agency, department, board, council, legislative or judicial branch, and political subdivision shall:

(1) Establish and maintain an active, continuing program for the efficient and economical management of the record-keeping activities of the agency;

(2) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency, designed to furnish information to protect the legal and financial rights of the state, and of persons directly affected by the agency's activities;

(3) Make, and submit to the administrator, schedules proposing the length of time each record series warrants retention for administrative, legal, historical or fiscal purposes, after it has been made in or received by the agency, and lists of records in the custody or under the control of the agency which are not needed in the transaction of current business, and do not possess sufficient administrative, legal, historical or fiscal value to warrant their further retention;

(4) Inventory the records in the custody or under the control of the agency, and submit to the administrator a report thereon, containing such data as the administrator shall prescribe, and including his recommendations as to which if any such records should be determined to be essential records. He shall review his inventory and report periodically and, as necessary, shall revise his report so that it is current, accurate and complete; and

(5) Comply with the rules, regulations, standards and procedures issued and set up by the administrator and the board, and cooperate in the conduct of surveys made by the administrator pursuant to sections 84-1201 to 84-1226.

**Source:** Laws 1961, c. 455, § 7, p. 1389; Laws 1969, c. 841, § 5, p. 3171; Laws 1979, LB 559, § 4.

**84-1207.01 Agency head; designate records officer; duties.**

In addition to the duties enumerated in section 84-1207, each state agency head shall designate a records officer from the management or professional level who shall be responsible for the overall coordination of records management activities within the agency.

**Source:** Laws 1976, LB 641, § 2.

**84-1208 Administrator; preservation duplicates of essential records; process used; exception.**

(1) The administrator may make or cause to be made preservation duplicates of essential records or may designate as preservation duplicates existing copies

thereof. A preservation duplicate shall be durable, accurate, complete, and clear and, if made by means of photography, microphotography, photocopying, film, microfilm, optical imagery, or similar processes, shall be prepared in conformity to standards prescribed and approved by the board.

(2) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, optical imagery, or similar process which accurately reproduces or forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record, whether the original is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall for all purposes be deemed a transcript, exemplification, or certified copy of the original record.

(3) No copy of an essential record shall be used as a preservation duplicate unless, under the general laws of the state, the copy has the same force and effect for all purposes as the original record.

**Source:** Laws 1961, c. 455, § 8, p. 1390; Laws 1991, LB 25, § 3.

**84-1209 Administrator; storage of records and preservation duplicates; charges.**

The administrator may establish storage facilities for essential records, preservation duplicates and other state records and may provide for a system of charges to allocate the cost of providing such storage among the agencies and departments utilizing the storage services. The system of charges shall, as nearly as may be practical, cover the actual costs of operating the storage facilities.

**Source:** Laws 1961, c. 455, § 9, p. 1390; Laws 1969, c. 841, § 6, p. 3172; Laws 1976, LB 641, § 3; Laws 1983, LB 617, § 28.

**84-1210 Administrator; records; maintain; temporary removal; inspection; copies certified.**

(1) The administrator shall properly maintain essential records and preservation duplicates stored by him.

(2) An essential record or preservation duplicate stored by the administrator may be removed by the regularly designated custodian for temporary use when necessary for the proper conduct of his office, and shall be returned to the administrator immediately after such use.

(3) When an essential record is stored by him, the administrator, upon the request of the regularly designated custodian thereof, shall provide for its inspection or for the making or certification of copies thereof, and such copies, when certified by the administrator, shall have the same force and effect for all purposes as if certified by the regularly designated custodian.

**Source:** Laws 1961, c. 455, § 10, p. 1391; Laws 1969, c. 841, § 7, p. 3173.

**84-1211 Records; confidential; protection.**

(1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of the Records Management Act, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made

accessible in a manner consistent with the access permitted similar records under sections 71-961 and 83-109.

(2) Nothing in the Records Management Act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under the Security, Privacy, and Dissemination of Criminal History Information Act.

**Source:** Laws 1961, c. 455, § 11, p. 1391; Laws 1969, c. 841, § 8, p. 3174; Laws 1979, LB 559, § 5; Laws 2004, LB 1083, § 143.

Cross References

Security, Privacy, and Dissemination of Criminal History Information Act, see section 29-3501.

**84-1212 Program for selection and preservation of essential records; review, periodically.**

The administrator shall review periodically, and at least once each year, the program for the selection and preservation of essential records, including the classification thereof and the provisions for preservation duplicates and for the safeguarding of essential records and preservation duplicates to insure that the purposes of sections 84-1201 to 84-1226 are accomplished.

**Source:** Laws 1961, c. 455, § 12, p. 1392; Laws 1969, c. 841, § 9, p. 3174; Laws 1979, LB 559, § 6.

**84-1212.01 Records retention and disposition schedule; review by State Archivist; approval; review by administrator.**

(1) Each records retention and disposition schedule submitted to the administrator shall be reviewed by the State Archivist for purposes of selection of archival and historical material, and all such material shall be identified as such on the schedule. When the State Archivist has determined that all archival and historical material has been properly identified and that no disposition, except by transfer to the State Archives of the Nebraska State Historical Society, has been recommended for such material, the State Archivist shall approve such records retention and disposition schedule and return it to the administrator.

(2) The administrator shall review each records retention and disposition schedule submitted, and if the recommended retention periods and the recommended dispositions satisfy audit requirements and give proper recognition to administrative, legal, and fiscal value of the records listed therein and if the records retention and disposition schedule has been approved by the State Archivist, such records retention and disposition schedule shall be approved by the administrator.

**Source:** Laws 1976, LB 641, § 4; Laws 1989, LB 18, § 8.

**84-1212.02 Records retention and disposition schedule; disposal of records pursuant to schedule; report.**

All state agency heads and all local agency heads are hereby authorized to dispose of the records of their agencies in accordance with records retention and disposition schedules which are applicable to their agencies if such schedules have been approved by the administrator pursuant to section

84-1212.01. Each agency head shall report any such records disposition to the administrator on forms provided by the administrator.

**Source:** Laws 1976, LB 641, § 5.

**84-1213 Records; property of government; protected; willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of; violation; penalty.**

All records made or received by or under the authority of, or coming into the custody, control, or possession of agencies in any of the three branches of the state government, or of any local political subdivision, in the course of their public duties, are the property of the government concerned, and shall not be mutilated, destroyed, transferred, removed, damaged, or otherwise disposed of, in whole or in part, except as provided by law.

Any person who shall willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of such records or any part of such records, except as provided by law, and any person who shall retain and continue to hold the possession of any such records, or parts thereof, belonging to the state government or to any local political subdivision, and shall refuse to deliver up such records, or parts thereof, to the proper official under whose authority such records belong, upon demand being made by such officer or, in cases of a defunct office, to the succeeding agency or to the State Archives of the Nebraska State Historical Society, shall be guilty of a Class III misdemeanor.

**Source:** Laws 1961, c. 455, § 13, p. 1392; Laws 1973, LB 224, § 15; Laws 1979, LB 559, § 7; Laws 1980, LB 747, § 3.

**84-1213.01 Records; violation; prosecute.**

The State Records Administrator, or any official under whose authority such records belong, shall report to the proper county attorney any supposed violation of section 84-1213 that in its judgment warrants prosecution. It shall be the duty of the several county attorneys to investigate supposed violations of such section and to prosecute violations of such section.

**Source:** Laws 1973, LB 224, § 16.

**84-1214 Agency; disposition of records; procedure.**

Whenever any agency desires to dispose of records which are not listed on an approved records retention and disposition schedule applicable to that agency, the agency head shall prepare and submit to the administrator, on forms provided by the administrator, a list of the records sought to be disposed of, and a request for approval of their disposition, which list and request shall be referred to the board for action at its next regular or special session. On consideration thereof, the board may approve such disposition thereof as may be legal and proper, or may refuse to approve any disposition, and the records as to which such determination has been made may thereupon be disposed of in accordance with the approval of the board.

**Source:** Laws 1961, c. 455, § 14, p. 1392; Laws 1969, c. 841, § 10, p. 3174; Laws 1976, LB 641, § 6.

**84-1214.01 State Archives; authority; duties.**

The State Archives of the Nebraska State Historical Society has the authority to acquire, in total or in part, any document, record, or material which has

been submitted to the board for disposition or transfer when such material is determined to be of archival or historical significance by the State Archivist or the board. The head of any agency shall certify in writing to the society the transfer of the custody of such material to the State Archives. No agency shall dispose of, in any other manner except by transfer to the State Archives, that material which has been appraised as archival or historical without the written consent of the State Archivist and the administrator. If such material is determined to be in jeopardy of destruction or deterioration and such material is not necessary to the conduct of daily business in the agency of origin, it shall be the prerogative of the State Archivist to petition the administrator and the agency of origin for the right to transfer such material into the safekeeping of the State Archives. It shall be the responsibility of the administrator to hear arguments for or against such petition and to determine the results of such petition. The State Archivist shall prepare invoices and receipts in triplicate for materials acquired under this section, shall retain one copy, and shall deliver one copy to the administrator and one copy to the agency head from whom the records are obtained.

**Source:** Laws 1969, c. 841, § 11, p. 3175; Laws 1989, LB 18, § 9.

**84-1215 Nonrecord material; destruction; procedure; personal and political papers; preservation.**

(1) If not otherwise prohibited by law, nonrecord materials, not included within the definition of records as contained in section 84-1202, may be destroyed at any time by the agency in possession thereof, without the prior approval of the administrator or board. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials, but nothing therein shall be contrary to any provision of law relating to the transfer of materials of historical value to the State Archives of the Nebraska State Historical Society.

(2) Members of the Legislature and other officials are encouraged to offer their personal and political papers of public interest to the State Archives for preservation subject to any reasonable restrictions concerning their use by other persons.

**Source:** Laws 1961, c. 455, § 15, p. 1393; Laws 1969, c. 841, § 12, p. 3176; Laws 1980, LB 747, § 4.

**84-1216 Administrator; rules and regulations; promulgate.**

The administrator shall promulgate such rules and regulations as may be necessary or proper to effectuate the purposes of sections 84-1201 to 84-1226. Those portions thereof which relate to functions specifically delegated to the board shall be approved and concurred in by the board.

**Source:** Laws 1961, c. 455, § 16, p. 1393; Laws 1979, LB 559, § 8.

**84-1217 Agencies; preservation of records; administrator; advise.**

All provisions of the Records Management Act shall apply to all agencies as defined in subdivision (1) of section 84-1202 and the administrator shall advise and assist in the establishment of programs for records management and for the selection and preservation of essential records of such branches, and, as

required by such branches, shall provide program services pursuant to the provisions of sections 84-1201 to 84-1226.

**Source:** Laws 1961, c. 455, § 17, p. 1393; Laws 1969, c. 841, § 13, p. 3176; Laws 1979, LB 559, § 9.

**84-1218 Political subdivisions; preservation of records; administrator; advise and assist; rules and regulations.**

The governing bodies of all local political subdivisions in this state, with the advice and assistance of the administrator and pursuant to the rules and regulations established by him, shall establish and maintain continuing programs to promote the principles of efficient records management for local records, and for the selection and preservation of essential local records, which programs, insofar as practicable, shall follow the patterns of the programs established for state records as provided in sections 84-1201 to 84-1226. Each such governing body shall promulgate such rules and regulations as are necessary or proper to effectuate and implement the programs so established, but nothing therein shall be in violation of the provisions of general law relating to the destruction of local records.

**Source:** Laws 1961, c. 455, § 18, p. 1393; Laws 1969, c. 841, § 14, p. 3176; Laws 1979, LB 559, § 10.

**84-1219 Administrator; biennial report; copies; furnish.**

The administrator shall prepare a biennial report on the status of programs established by him as provided in sections 84-1201 to 84-1226, and on the progress made during the preceding biennium in implementing and effectuating such programs. Copies of this report shall be furnished the Governor, the Speaker of the Legislature, and such other officials and agencies as the Governor or the board shall direct.

**Source:** Laws 1961, c. 455, § 19, p. 1394; Laws 1979, LB 559, § 11.

**84-1220 Act, how cited.**

Sections 84-1201 to 84-1227 shall be known and may be cited as the Records Management Act.

**Source:** Laws 1961, c. 455, § 20, p. 1394; Laws 1979, LB 559, § 12; Laws 1997, LB 590, § 13.

**84-1221 Repealed. Laws 1989, LB 18, § 10.**

**84-1222 Purchase of microfilm system or equipment; approval; property of State Records Administrator.**

After May 18, 1977, no state agency shall purchase any microfilm system or equipment prior to the approval of the State Records Administrator. The administrator shall not approve internal microfilm activities of any state agency unless such activities may not be feasibly provided by the central microfilming agency and are necessary to a particular operation within the state agency. Any equipment purchased under this section shall become the property of the State Records Administrator and shall be subject to the provisions of section 84-1223.

**Source:** Laws 1977, LB 520, § 2; Laws 1979, LB 559, § 13.

**84-1223 Micrographic production, processing, and viewing equipment; property of administrator; exception; credit.**

On May 19, 1979, all micrographic production, processing, and viewing equipment currently owned or subsequently acquired under the provisions of section 84-1222 by any state executive, judicial, or legislative agency, except the University of Nebraska or the state colleges, shall become the property of the State Records Administrator, regardless of the fund source from which the equipment was originally purchased. Appropriate credit, against future charges, shall be given to all agencies for the fair market value of all equipment accepted which had been purchased with federal funds or trust funds. Equipment purchased with funds from the Highway Cash Fund shall not be deemed to have been purchased with federal funds or trust funds.

**Source:** Laws 1977, LB 520, § 4; Laws 1979, LB 559, § 14; Laws 1980, LB 747, § 5.

**84-1224 State Records Administrator; microfilm; micrographic equipment; powers.**

The State Records Administrator shall:

- (1) Be empowered to review the microfilm systems within every agency of the state;
- (2) Be empowered to cause such systems to be merged with a central microfilm agency in the event that a cost analysis shows that economic advantage may be achieved;
- (3) Be empowered to permit the establishment of microfilming services within any agency or department of the state if a potential economy or a substantial convenience for the state would result; and
- (4) After July 1, 1978, be empowered to determine the operating locations of all micrographic equipment in his possession.

**Source:** Laws 1977, LB 520, § 4.

**84-1225 State Records Administrator; micropublishing and computer output microfilm services; charges.**

The State Records Administrator shall provide for a system of charges for micropublishing services and computer output microfilm services rendered by the central microfilming agency to any other department or agency of the state when these charges are allocable to a particular project carried on by such microfilming agency. Such charges shall, as nearly as may be practical, reflect the actual cost of services provided by the central microfilming agency. On July 1, 1978, and thereafter the State Records Administrator shall extend this system of charges to include source document microfilming. The State Records Administrator shall extend this system of charges and user fees for all micrographic equipment which is the property of the administrator and which is used by any other state agency or department.

**Source:** Laws 1977, LB 520, § 5; Laws 1979, LB 559, § 15.

**84-1226 Records Management Micrographics Services Revolving Fund; created; credits; expenditures; rental.**

(1) There is hereby created a fund to be known as the Records Management Micrographics Services Revolving Fund. All charges received by the Secretary of State under sections 84-1209 and 84-1225 and legislative appropriations shall be credited to such fund. Whenever any micrographics equipment of any state agency, except the University of Nebraska or the state colleges, shall become surplus property and shall be sold pursuant to section 81-161.04, the proceeds from the sale of such equipment shall be deposited in the state treasury and shall be credited by the State Treasurer to the Records Management Micrographics Services Revolving Fund. Expenditures shall be made from such fund to finance the micropublishing services and the computer output microfilm services by the Secretary of State or his or her authorized agent in accordance with appropriations made by the Legislature, to receive and expend funds pursuant to section 84-1225 for the provision of source document microfilming and for procuring and replacing micrographic equipment provided to state agencies, and to receive and expend funds pursuant to section 84-1209 for the providing of records storage services for state agencies.

(2) By agreement between any state agency and the State Records Administrator, any state agency may be billed one full year's rental for equipment at the beginning of each fiscal year. The State Records Administrator may coordinate with the Director of Administrative Services to set up a separate subaccount within the fund for the purpose of accounting for micrographic equipment procurement and replacement.

**Source:** Laws 1977, LB 520, § 6; Laws 1979, LB 559, § 16; Laws 1983, LB 617, § 29.

#### **84-1227 Records Management Cash Fund; created; use; investment.**

There is hereby established in the state treasury a special fund to be known as the Records Management Cash Fund which, when appropriated by the Legislature, shall be expended by the Secretary of State for the purposes of providing records management services and assistance to political subdivisions, for development and maintenance of a gateway or electronic network for accessing public records, and for grants to political subdivisions as provided in subdivision (1)(j) of section 84-1204. All fees and charges for the purpose of records management services and analysis received by the Secretary of State from the political subdivisions shall be remitted to the State Treasurer for credit to such fund. Any money in the 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.

**Source:** Laws 1984, LB 527, § 3; Laws 1995, LB 7, § 149; Laws 1997, LB 590, § 14; Laws 2003, LB 257, § 2.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

### **(b) ELECTRONIC RECORDS**

#### **84-1228 Electronic record constituting permanent record; requirements.**

Any electronic record authorized by statute to constitute the permanent record shall be electronically reproduced onto a protected backup file within five working days of the creation of the permanent record. Adequate protective

technology shall be used by the keeper of the records to protect the backup file from electrical surges and from unauthorized tampering. The backup file shall be kept in a separate location from the permanent record to minimize the risk of destruction of both copies.

**Source:** Laws 1999, LB 234, § 14; Laws 2006, LB 921, § 12.

### ARTICLE 13

#### STATE EMPLOYEES RETIREMENT ACT

Section	
84-1301.	Terms, defined.
84-1302.	State Employees Retirement System; established; operative date; official name; acceptance of contributions.
84-1303.	Repealed. Laws 1971, LB 987, § 38.
84-1304.	Repealed. Laws 1971, LB 987, § 38.
84-1305.	Retirement board; duties.
84-1305.01.	Records; employer education program.
84-1305.02.	Retirement board; power to adjust contributions and benefits.
84-1306.	Repealed. Laws 1996, LB 847, § 62.
84-1307.	Retirement system; membership; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.
84-1308.	Retirement system; contribution of employees; method of payment; amount; employer pick up contributions.
84-1309.	State Employees Retirement Fund; established; amounts credited; disbursements.
84-1309.01.	Board; provide benefit liability information; verify investments.
84-1309.02.	Cash balance benefit; election; effect; administrative services agreements; authorized.
84-1310.	Defined contribution benefit; employee account.
84-1310.01.	Defined contribution benefit; employee account; investment options; procedures; administration.
84-1311.	Defined contribution benefit; employer account; investment.
84-1311.01.	Repealed. Laws 1998, LB 1191, § 85.
84-1311.02.	Repealed. Laws 1998, LB 1191, § 85.
84-1311.03.	Defined contribution benefit; employer account; investment options; procedures; administration.
84-1312.	Direct rollover; terms, defined; distributee; powers; board; duties.
84-1313.	Retirement system; accept payments and rollovers; limitations; board; duties.
84-1313.01.	Retirement system; accept transfers; limitations; how treated.
84-1314.	State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment.
84-1315.	Auditor of Public Accounts; annual audit of retirement system; annual report to Clerk of the Legislature.
84-1315.01.	Transferred to section 84-1507.
84-1316.	Retirement system; sue and be sued; actions; representation by Attorney General.
84-1317.	Employees; retirement date; application for benefits; deferment of benefits; board; duties.
84-1317.01.	Repealed. Laws 1982, LB 592, § 2.
84-1318.	Employees; benefits; retirement value; how computed.
84-1319.	Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.
84-1319.01.	State Equal Retirement Benefit Fund; created; use.
84-1320.	Prior service retirement benefits; when payable; how computed; deferment; reduction in amount, when.
84-1321.	Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits.

- Section
- 84-1321.01. Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; investment.
- 84-1322. Employees; reemployment; status; how treated.
- 84-1323. Employees; death before retirement; death benefit; amount.
- 84-1323.01. Employee; retirement; disability; medical examination.
- 84-1323.02. Repealed. Laws 1993, LB 417, § 9.
- 84-1324. Retirement benefits; exemption from legal process; exception.
- 84-1325. Employees; military service; credit; payments.
- 84-1326. Retirement system; membership status; not lost while employment continues.
- 84-1326.01. Retirement system; member; employee status changed to behavioral health region or community mental health center; benefits retained; application; immediate participation; when.
- 84-1326.02. Repealed. Laws 2006, LB 366, § 14.
- 84-1326.03. Transferred to section 81-1328.02.
- 84-1326.04. Transferred to section 81-1328.03.
- 84-1327. Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.
- 84-1328. Retirement benefits; declared additional to benefits under federal Social Security Act.
- 84-1329. Limitation of actions.
- 84-1329.01. Transferred to section 84-1504.
- 84-1329.02. Transferred to section 84-1505.
- 84-1329.03. Transferred to section 84-1506.
- 84-1329.04. Retirement system contributions, property, and rights; how treated.
- 84-1329.05. Termination of system or contributions; effect.
- 84-1330. Elected officials and employees having regular term; sections, when operative.
- 84-1330.01. State Employees Retirement Fund; elected officials and employees having a regular term; sections, when operative.
- 84-1331. Act, how cited.
- 84-1332. City or county employee changed by Legislature to state employee; vesting of prior service retirement benefits; application; vested benefits.
- 84-1333. County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.

#### **84-1301 Terms, defined.**

For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's

termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of disability means the date on which a member is determined to be disabled by the board;

(7) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 84-1310 and, if vested, employer contributions and earnings pursuant to section 84-1311;

(8) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration;

(9) Employee means any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, (g) the Commissioner of Labor employed prior to July 1, 1984, (h) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (i) the Nebraska National Guard air and army technicians, (j) persons

eligible for membership under the School Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (k) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(13) Five-year break in service means five consecutive one-year breaks in service;

(14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(15) Fund means the State Employees Retirement Fund created by section 84-1309;

(16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(18) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account

for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(19) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(20) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(21) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(22) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(23) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(24) Prior service means service before January 1, 1964;

(25) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

(26) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(27) Retirement means qualifying for and accepting the retirement benefit granted under the State Employees Retirement Act after terminating employment;

(28) Retirement board or board means the Public Employees Retirement Board;

(29) Retirement system means the State Employees Retirement System of the State of Nebraska;

(30) Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(31) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(32) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or

former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(33) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency. It shall be the responsibility of the current employer to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a termination benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(34) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1963, c. 532, § 1, p. 1667; Laws 1965, c. 574, § 1, p. 1864; Laws 1965, c. 573, § 1, p. 1861; Laws 1969, c. 584, § 116, p. 2420; Laws 1971, LB 987, § 33; Laws 1973, LB 498, § 1; Laws 1974, LB 905, § 8; Laws 1980, LB 818, § 3; Laws 1982, LB 942, § 8; Laws 1983, LB 223, § 4; Laws 1984, LB 747, § 6; Laws 1984, LB 751, § 1; Laws 1986, LB 325, § 15; Laws 1986, LB 529, § 54; Laws 1986, LB 311, § 29; Laws 1989, LB 506, § 19; Laws 1991, LB 549, § 60; Laws 1993, LB 417, § 6; Laws 1994, LB 1068, § 4; Laws 1996, LB 847, § 41; Laws 1996, LB 900, § 1070; Laws 1996, LB 1076, § 37; Laws 1996, LB 1273, § 30; Laws 1997, LB 624, § 35; Laws 1998, LB 1191, § 69; Laws 1999, LB 703, § 20; Laws 2000, LB 1192, § 22; Laws 2002, LB 407, § 54; Laws 2002, LB 470, § 10; Laws 2002, LB 687, § 18; Laws 2003, LB 451, § 23; Laws 2004, LB 1097, § 32; Laws 2006, LB 366, § 7; Laws 2006, LB 1019, § 14.

#### Cross References

For provisions on Public Employees Retirement Board, see sections 84-1501 to 84-1513.

Spousal Pension Rights Act, see section 42-1101.

State Employees Retirement Act sustained as constitutional.  
Gossman v. State Employees Retirement System, 177 Neb. 326,  
129 N.W.2d 97 (1964).

**84-1302 State Employees Retirement System; established; operative date; official name; acceptance of contributions.**

(1) An employees retirement system is hereby established for the purpose of providing a retirement annuity or other benefits for employees as provided by

sections 84-1301 to 84-1333. The retirement system so created shall begin operation January 1, 1964. It shall be known as the State Employees Retirement System of the State of Nebraska and by such name shall transact all business and hold all cash and other property as provided in such sections.

(2) The retirement system shall not accept as contributions any money from members or the state except the following:

- (a) Mandatory contributions established by sections 84-1308 and 84-1309;
- (b) Money that is a repayment of refunded contributions made pursuant to section 84-1322;
- (c) Contributions for military service credit made pursuant to section 84-1325;
- (d) Actuarially required contributions pursuant to subdivision (4)(b) of section 84-1319;
- (e) Trustee-to-trustee transfers pursuant to section 84-1313.01; or
- (f) Corrections ordered by the board pursuant to section 84-1305.02.

**Source:** Laws 1963, c. 532, § 2, p. 1668; Laws 1991, LB 549, § 61; Laws 2003, LB 451, § 24.

**84-1303 Repealed. Laws 1971, LB 987, § 38.**

**84-1304 Repealed. Laws 1971, LB 987, § 38.**

**84-1305 Retirement board; duties.**

The general administration of the retirement system shall be vested in the retirement board. The board shall adopt and promulgate rules and regulations to carry out the State Employees Retirement Act. The board shall maintain records and may employ any assistance as may be necessary to carry out the act.

**Source:** Laws 1963, c. 532, § 5, p. 1669; Laws 1969, c. 584, § 117, p. 2421; Laws 1973, LB 498, § 2; Laws 1984, LB 751, § 2; Laws 1991, LB 549, § 62; Laws 1995, LB 369, § 8; Laws 1996, LB 847, § 42.

**84-1305.01 Records; employer education program.**

(1) The director of the Nebraska Public Employees Retirement Systems shall keep a complete record of all members with respect to name, current address, age, contributions, and any other facts as may be necessary in the administration of the State Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement sys-

tems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1991, LB 549, § 69; Laws 1998, LB 1191, § 70; Laws 2000, LB 1192, § 23; Laws 2005, LB 503, § 14.

**84-1305.02 Retirement board; power to adjust contributions and benefits.**

(1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the State Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 41; Laws 2002, LB 687, § 19; Laws 2006, LB 1019, § 15.

**84-1306 Repealed. Laws 1996, LB 847, § 62.**

**84-1307 Retirement system; membership; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.**

(1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment; and (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the

Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(4) Within the first thirty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

**Source:** Laws 1963, c. 532, § 7, p. 1670; Laws 1969, c. 842, § 1, p. 3177; Laws 1973, LB 492, § 1; Laws 1983, LB 219, § 1; Laws 1986, LB 325, § 16; Laws 1986, LB 311, § 30; Laws 1990, LB 834, § 1; Laws 1995, LB 501, § 11; Laws 1996, LB 1076, § 38; Laws 1997, LB 624, § 36; Laws 1998, LB 1191, § 71; Laws 1999, LB 703, § 21; Laws 2000, LB 1192, § 24; Laws 2002, LB 407, § 55; Laws 2002, LB 687, § 20; Laws 2004, LB 1097, § 33; Laws 2006, LB 366, § 8; Laws 2008, LB1147, § 13.  
Operative date July 18, 2008.

**84-1308 Retirement system; contribution of employees; method of payment; amount; employer pick up contributions.**

(1) Each employee who is a member of the retirement system shall pay or have paid on his or her behalf a sum equal to four and eight-tenths percent of his or her monthly compensation. Such amounts shall be deducted monthly pursuant to subsection (2) of this section by the Director of Administrative Services. All money received shall be set aside by the State Treasurer and credited to the State Employees Retirement Fund.

(2) The employer shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The employer shall pay

these employee contributions from the same source of funds which is used in paying earnings to the employee. The employer shall pick up these contributions by a deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the State Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

**Source:** Laws 1963, c. 532, § 8, p. 1670; Laws 1967, c. 617, § 3, p. 2070; Laws 1969, c. 584, § 118, p. 2421; Laws 1981, LB 459, § 6; Laws 1984, LB 218, § 5; Laws 1984, LB 751, § 3; Laws 1991, LB 549, § 63; Laws 1995, LB 574, § 85; Laws 1998, LB 1191, § 72; Laws 2001, LB 408, § 25; Laws 2006, LB 366, § 9.

**84-1309 State Employees Retirement Fund; established; amounts credited; disbursements.**

(1) There is hereby established in the state treasury a special fund to be known as the State Employees Retirement Fund to consist of such funds as the Legislature shall from time to time appropriate. The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from funds appropriated from the General Fund.

(2) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund from the funds of each department with at least one employee who is a member of the retirement system for a sum equal to one hundred fifty-six percent of the amounts deducted, in accordance with section 84-1308, from the compensation of employees who are paid from any funds other than funds appropriated from the General Fund.

(3) The Director of Administrative Services shall credit an amount each month to the State Employees Retirement Fund for prior service benefits. After receiving the annual report required by section 84-1315, the Legislature may make such adjustments in the funding of prior service benefits as necessary to keep the plan sound. The contribution for prior service purposes shall cease when the prior service obligation is properly funded.

(4) The State Treasurer shall be the custodian of the funds and securities of the retirement system and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall transmit monthly to the board a detailed statement showing all credits to and disbursements from the fund. He or she shall disburse money from the fund only on warrants issued by the Director of Administrative Services upon vouchers signed by a person authorized by the retirement board.

**Source:** Laws 1963, c. 532, § 9, p. 1671; Laws 1967, c. 619, § 1, p. 2074; Laws 1969, c. 584, § 119, p. 2422; Laws 1971, LB 476, § 1; Laws 1971, LB 987, § 34; Laws 1981, LB 459, § 7; Laws 1984, LB 751, § 4; Laws 1991, LB 549, § 64; Laws 1997, LB 623, § 41.

**84-1309.01 Board; provide benefit liability information; verify investments.**

The board shall provide benefit liability information and other assistance to the Nebraska Investment Council for the establishment of policy portfolio

objectives for the investing and reinvesting of the assets of the retirement system. The board shall verify that the investments of the assets of the retirement system by the council and the state investment officer are invested and reinvested for the exclusive purposes of providing benefits to members and members' beneficiaries and that the assets of the retirement system are not invested with the sole or primary investment objective of economic development or social purposes or objectives. Such verification shall be included in the written plan of action pursuant to subsection (3) of section 84-1503.

**Source:** Laws 1984, LB 653, § 1; Laws 1996, LB 847, § 43; Laws 2005, LB 503, § 15.

**84-1309.02 Cash balance benefit; election; effect; administrative services agreements; authorized.**

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this subsection.

**Source:** Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB328, § 7.

#### **84-1310 Defined contribution benefit; employee account.**

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the compensation deductions made in accordance with section 84-1308 shall be known as his or her employee account. Each year commencing January 1, 1975, and ending December 31, 1984, regular interest shall be credited to the employee account. As of January 1 of each such year, a member's employee account shall be equal to one hundred percent of his or her employee account as of the next preceding January 1 increased by any regular interest earned and any amounts deducted from the member's compensation since the next preceding January 1 in accordance with the provisions of section 84-1308. On and after January 1, 1985, the employee account shall be equal to the sum of the stable return account, the equities account, and any assets of additional accounts created by the board pursuant to section 84-1310.01.

**Source:** Laws 1963, c. 532, § 10, p. 1671; Laws 1969, c. 842, § 2, p. 3178; Laws 1974, LB 905, § 9; Laws 1983, LB 313, § 3; Laws 1984, LB 751, § 5; Laws 1991, LB 549, § 65; Laws 1994, LB 833, § 46; Laws 2002, LB 687, § 22.

#### **84-1310.01 Defined contribution benefit; employee account; investment options; procedures; administration.**

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. Such investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy

substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning on July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

**Source:** Laws 1984, LB 751, § 11; Laws 1991, LB 549, § 66; Laws 1994, LB 833, § 47; Laws 1996, LB 847, § 44; Laws 1999, LB 703, § 22; Laws 2000, LB 1200, § 5; Laws 2001, LB 408, § 26; Laws 2002, LB 407, § 56; Laws 2002, LB 687, § 23; Laws 2005, LB 503, § 16; Laws 2008, LB1147, § 14.  
Operative date July 18, 2008.

**84-1311 Defined contribution benefit; employer account; investment.**

(1) For a member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, a member's share of the fund arising from the state contributions made in accordance with section 84-1309 shall be known as his or her employer account. Prior to January 1, 1981, as of any January 1 a member's employer account shall be equal to his or her account as of the next preceding January 1, increased by one hundred four percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. As of January 1, 1982, a member's employer account shall be equal to the account as of January 1, 1981, increased by one hundred four percent of the amounts deducted from the member's compensation for the first nine months of the year and one hundred fifty-six percent of the amount so deducted for the final three months of the year in accordance with section 84-1308. As of January 1, 1983, and each year thereafter, the member's employer account shall be equal to the account as of the next preceding January 1 increased by one hundred fifty-six percent of any amounts deducted from the member's compensation since the next preceding January 1 in accordance with section 84-1308. The member's employer account shall be increased by any interest allocated under the provisions of the guaranteed investment contract and any gains on investments and reduced by any losses on investments, any expense charges under the guaranteed investment contract or other investments, and any expense charges incurred in connection with administering the retirement system in excess of those provided for in section 84-1321.01, except that a member who ceased being an employee since the next preceding January 1 may have his or her employer account reduced in accordance with section 84-1321.01. On and after July 1, 1999, the employer account shall be equal to the sum of the assets of the accounts created by the board pursuant to section 84-1311.03.

(2) On and after January 1, 1997, and until July 1, 1999, the state investment officer shall invest the employer account, and, after July 1, 1999, upon maturity, the state investment officer shall invest the employer account funds which have been invested in guaranteed investment contracts prior to January 1, 1997. On and after July 1, 1999, the employer account shall be invested pursuant to section 84-1311.03. The state investment officer shall invest or reinvest the funds in securities and investments the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is

appointed on the basis of representations of special skills or expertise, he or she is under a duty to use such skills.

**Source:** Laws 1963, c. 532, § 11, p. 1672; Laws 1971, LB 987, § 35; Laws 1973, LB 498, § 3; Laws 1981, LB 459, § 8; Laws 1983, LB 313, § 4; Laws 1984, LB 751, § 6; Laws 1986, LB 311, § 31; Laws 1991, LB 549, § 67; Laws 1994, LB 833, § 48; Laws 1996, LB 847, § 45; Laws 1999, LB 687, § 5; Laws 1999, LB 703, § 23; Laws 2002, LB 687, § 24.

**84-1311.01 Repealed. Laws 1998, LB 1191, § 85.**

**84-1311.02 Repealed. Laws 1998, LB 1191, § 85.**

**84-1311.03 Defined contribution benefit; employer account; investment options; procedures; administration.**

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 84-1310.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 84-1310.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

**Source:** Laws 1999, LB 687, § 4; Laws 2000, LB 1200, § 6; Laws 2001, LB 408, § 27; Laws 2002, LB 407, § 57; Laws 2002, LB 687,

§ 25; Laws 2004, LB 1097, § 34; Laws 2005, LB 503, § 17; Laws 2008, LB1147, § 15.

Operative date July 18, 2008.

**84-1312 Direct rollover; terms, defined; distributee; powers; board; duties.**

(1) For purposes of this section and section 84-1313:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, and (v) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (iv) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 48; Laws 2002, LB 407, § 58.

**84-1313 Retirement system; accept payments and rollovers; limitations; board; duties.**

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 84-1322 or 84-1325 if the contributions do not exceed the amount of payment authorized to be paid by the member pursuant to section 84-1322 or 84-1325 and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover

amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 84-1322 or 84-1325.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includible in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board shall adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 49; Laws 1997, LB 624, § 37; Laws 2002, LB 407, § 59.

**84-1313.01 Retirement system; accept transfers; limitations; how treated.**

The retirement system may accept as payment for withdrawn amounts made pursuant to the State Employees Retirement Act a direct trustee-to-trustee transfer from (1) an eligible tax-sheltered annuity plan as described in section 403(b) of the Internal Revenue Code or (2) an eligible deferred compensation plan as described in section 457(b) of the code on behalf of a member who is making payments for such amounts. The amount transferred shall not exceed the amount withdrawn and such transferred amount shall qualify as a purchase of permissive service credit by the member as defined in section 415 of the code.

**Source:** Laws 2002, LB 407, § 61.

**84-1314 State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment.**

(1) The State Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, 84-1311, and 84-1311.03. Any money in the 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.

(2) The State Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, 84-1311, and 84-1311.03. Any money in the 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.

**Source:** Laws 1997, LB 623, § 40; Laws 2000, LB 1200, § 7; Laws 2001, LB 408, § 28; Laws 2003, LB 451, § 26; Laws 2005, LB 364, § 18; Laws 2007, LB328, § 8.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-1315 Auditor of Public Accounts; annual audit of retirement system; annual report to Clerk of the Legislature.**

It shall be the duty of the Auditor of Public Accounts to make an annual audit of the retirement system and an annual report to the retirement board and to the Clerk of the Legislature of the condition of the retirement system. Each member of the Legislature shall receive a copy of the report required by this section by making a request for such report to either the Auditor of Public Accounts or the retirement board.

**Source:** Laws 1963, c. 532, § 15, p. 1673; Laws 1971, LB 987, § 37; Laws 1972, LB 1072, § 1; Laws 1979, LB 322, § 75; Laws 1988, LB 1169, § 2.

**84-1315.01 Transferred to section 84-1507.**

**84-1316 Retirement system; sue and be sued; actions; representation by Attorney General.**

The retirement system may sue or be sued in the name of the system, and in all actions brought by or against it, the system shall be represented by the Attorney General.

**Source:** Laws 1963, c. 532, § 16, p. 1673; Laws 1996, LB 847, § 46.

**84-1317 Employees; retirement date; application for benefits; deferment of benefits; board; duties.**

(1) Upon filing an application for benefits with the board, an employee may elect to retire after the attainment of age fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the State Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity

start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the state.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

**Source:** Laws 1963, c. 532, § 17, p. 1673; Laws 1967, c. 619, § 2, p. 2075; Laws 1971, LB 360, § 1; Laws 1973, LB 498, § 4; Laws 1973, LB 55, § 1; Laws 1974, LB 740, § 2; Laws 1979, LB 391, § 7; Laws 1979, LB 161, § 3; Laws 1981, LB 288, § 1; Laws 1982, LB 287, § 5; Laws 1983, LB 604, § 25; Laws 1983, LB 219, § 2; Laws 1986, LB 325, § 17; Laws 1986, LB 311, § 32; Laws 1987, LB 296, § 4; Laws 1996, LB 1076, § 39; Laws 1997, LB 624, § 38; Laws 2003, LB 451, § 27.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**84-1317.01 Repealed. Laws 1982, LB 592, § 2.**

**84-1318 Employees; benefits; retirement value; how computed.**

The retirement value for any employee who retires under the provisions of section 84-1317 shall be (1) for participants in the defined contribution benefit, the sum of the employee's employee account and employer account as of the date of final account value and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02 as of the date of final account value.

**Source:** Laws 1963, c. 532, § 18, p. 1674; Laws 2002, LB 687, § 26; Laws 2003, LB 451, § 28.

**84-1319 Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.**

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value

payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 84-1318 except as provided in this section.

The board shall provide to any state employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 84-1309.02, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value

shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 84-1309.02, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

**Source:** Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB328, § 9.

**84-1319.01 State Equal Retirement Benefit Fund; created; use.**

There is hereby created the State Equal Retirement Benefit Fund, to be administered by the board. Each state agency participating in the retirement system shall make a contribution at least once a year to the fund, in addition to any other retirement contributions. Such contribution shall be in an amount determined by the board to provide all similarly situated male and female members of the retirement system with equal benefits pursuant to subsection (2) of section 84-1319 and to provide for direct expenses incurred in administering the fund. The amount contributed to the fund by each state agency participating in the retirement system shall be proportionate to the total amount such agency contributes to the system for retirement benefits.

**Source:** Laws 1983, LB 210, § 3; Laws 1998, LB 1191, § 73.

**84-1320 Prior service retirement benefits; when payable; how computed; deferment; reduction in amount, when.**

The prior service retirement benefit shall be a straight life annuity, payable monthly with the first payment made as of the annuity start date, in an amount determined in accordance with the State Employees Retirement Act, except that the payments may be made less often than monthly if the monthly payment would be less than fifteen dollars. At the option of the member, the first payment may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such deferred benefit shall be the actuarial equivalent, based on factors designated by the board, of the prior service benefit. In the event of retirement before age sixty-five under section 84-1317, the amount of the prior service annuity shall be reduced in accordance with the principles of actuarial equivalence based on factors designated by the board. Any member of the retirement system who ceases to be an employee before becoming eligible for retirement under section 84-1317, who has accrued a prior service retirement benefit as defined in the act, and who has been continuously employed by the state for ten or more years immediately prior to termination shall receive the prior service retirement benefit determined in accordance with the act upon attaining age sixty-five. At the option of the terminating member, such annuity may commence as of the first of the

month at any time after such member attains the age of fifty-five or may be deferred, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member may be made at any time prior to the commencement of the annuity payments. Any terminating employee who forfeits a vested future service retirement benefit by withdrawing his or her employee account shall also forfeit any vested prior service retirement benefit to which he or she would otherwise be entitled.

**Source:** Laws 1963, c. 532, § 20, p. 1675; Laws 1973, LB 479, § 1; Laws 1976, LB 643, § 1; Laws 1984, LB 751, § 8; Laws 1986, LB 325, § 19; Laws 1986, LB 311, § 34; Laws 1987, LB 308, § 2; Laws 1994, LB 833, § 51; Laws 2003, LB 451, § 30.

**84-1321 Employees; termination of employment; benefits; when; how computed; vesting; deferment of benefits.**

(1) Except as provided in section 42-1107, upon termination of employment before becoming eligible for retirement under section 84-1317, a member may, upon application to the board, receive:

(a) If not vested, a termination benefit equal to the amount in his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount in his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the vested portion of the employer account or member cash balance account or any annuity provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the state or may be deferred, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the state. Such election by the terminating member

shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 84-1307, including vesting credit. If an employee retires pursuant to section 84-1317, such an employee shall be fully vested in the retirement system.

**Source:** Laws 1963, c. 532, § 21, p. 1675; Laws 1973, LB 498, § 6; Laws 1975, LB 56, § 3; Laws 1983, LB 604, § 26; Laws 1983, LB 219, § 3; Laws 1984, LB 751, § 9; Laws 1986, LB 325, § 20; Laws 1986, LB 311, § 35; Laws 1987, LB 308, § 3; Laws 1987, LB 60, § 5; Laws 1991, LB 549, § 71; Laws 1993, LB 417, § 7; Laws 1994, LB 1306, § 9; Laws 1996, LB 1076, § 40; Laws 1996, LB 1273, § 32; Laws 1997, LB 624, § 39; Laws 2002, LB 687, § 28; Laws 2003, LB 451, § 31; Laws 2006, LB 366, § 11.

**84-1321.01 Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; investment.**

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the State Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the State Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the State Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts. No forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the state and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account shall be suspended pending the final outcome of the grievance or other appeal.

(3) The State Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. The fund shall be established and maintained separate from any funds held in trust for the benefit of members under the retirement system. The director of the Nebraska Public Employees Retirement Systems shall certify to the Accounting Administrator of the Department of Administrative Services when accumulated employer account forfeiture funds are available to reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. Following such certification, the Accounting Administrator shall transfer the amount reduced from the state contribution from the Imprest Payroll Distributive Fund to the State Employer Retirement Expense Fund. Expenses incurred as a result of the state depositing amounts into the State Employer Retirement Expense Fund shall be deducted prior to

any additional expenses being allocated. Any remaining amount shall be allocated in accordance with section 23-2319.02. Any money in the 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.

**Source:** Laws 1997, LB 624, § 40; Laws 2000, LB 1200, § 8; Laws 2002, LB 687, § 29; Laws 2003, LB 451, § 32; Laws 2005, LB 364, § 19; Laws 2007, LB328, § 10.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**84-1322 Employees; reemployment; status; how treated.**

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the State Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 84-1317 and again becomes a permanent full-time or permanent part-time state employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after reentry into the retirement system under subsection (3) of section 84-1321, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 84-1321, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 84-1321. This subsection shall apply whether or not the person was a state employee on April 20, 1986, or July 17, 1986.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 84-1321 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state

more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

**Source:** Laws 1963, c. 532, § 22, p. 1676; Laws 1986, LB 325, § 21; Laws 1986, LB 311, § 36; Laws 1991, LB 549, § 72; Laws 1997, LB 624, § 41; Laws 1999, LB 703, § 24; Laws 2002, LB 407, § 60; Laws 2002, LB 687, § 30; Laws 2003, LB 451, § 33; Laws 2004, LB 1097, § 35; Laws 2007, LB328, § 11; Laws 2008, LB1147, § 16.

Operative date July 18, 2008.

**84-1323 Employees; death before retirement; death benefit; amount.**

In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 84-1309.02. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred twenty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

**Source:** Laws 1963, c. 532, § 23, p. 1676; Laws 1973, LB 498, § 7; Laws 1984, LB 751, § 10; Laws 1994, LB 1306, § 10; Laws 1996, LB 1273, § 33; Laws 2002, LB 687, § 31; Laws 2003, LB 451, § 34; Laws 2004, LB 1097, § 36.

**84-1323.01 Employee; retirement; disability; medical examination.**

(1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to

be selected by the retirement board, and the physician shall certify to the board that the member suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration and should be retired. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five to undergo a medical examination at the expense of the board once each year. If any disability beneficiary refuses to undergo such an examination, the disability retirement benefit may be discontinued by the board.

**Source:** Laws 1973, LB 498, § 8; Laws 1993, LB 417, § 8; Laws 1997, LB 623, § 44; Laws 1999, LB 703, § 25; Laws 2001, LB 408, § 29.

**84-1323.02 Repealed. Laws 1993, LB 417, § 9.**

**84-1324 Retirement benefits; exemption from legal process; exception.**

All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

**Source:** Laws 1963, c. 532, § 24, p. 1676; Laws 1986, LB 311, § 37; Laws 1989, LB 506, § 20; Laws 1996, LB 1273, § 34.

**Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

**84-1325 Employees; military service; credit; payments.**

(1) Any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of the provisions of section 84-1317, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subsection (2) of this section.

(2) Under such rules and regulations as the retirement board adopts and promulgates, any employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (a) the employee shall be treated as not having incurred a break in service by reason of his or her period of military service, (b) the period of military service shall be credited for the purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan, and (c) the employer shall allocate the amount of employer contributions to the member's employer account in the same manner and to the same extent the allocation occurs for other employees during the

period of service. For purposes of member and employer contributions under this subsection, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service.

(3) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to this section, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (1) of section 84-1308.

**Source:** Laws 1963, c. 532, § 25, p. 1676; Laws 1994, LB 833, § 52; Laws 1996, LB 847, § 47; Laws 1999, LB 703, § 26; Laws 2004, LB 1097, § 37.

**84-1326 Retirement system; membership status; not lost while employment continues.**

Persons who have become members of the retirement system shall not thereafter lose their status as members while they remain employees.

**Source:** Laws 1963, c. 532, § 26, p. 1676.

**84-1326.01 Retirement system; member; employee status changed to behavioral health region or community mental health center; benefits retained; application; immediate participation; when.**

(1) Any state employee who is a member of the State Employees Retirement System of the State of Nebraska and whose status is changed by the Legislature to that of an employee of a behavioral health region or an employee of a community mental health center shall, upon application to the Public Employees Retirement Board, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have accrued to the date of transfer. Such employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits.

(2) Any employee shall be eligible for immediate participation in the retirement program available to the employee in the political subdivision of the State of Nebraska to which such employee is transferred with no minimum period of service required, if the minimum age requirement and length of service, with either the State of Nebraska or the political subdivision, total the requirements of the retirement system to which the employee is transferred.

**Source:** Laws 1975, LB 189, § 9; Laws 1976, LB 794, § 1; Laws 2004, LB 1083, § 144.

**84-1326.02 Repealed. Laws 2006, LB 366, § 14.**

**84-1326.03 Transferred to section 81-1328.02.**

**84-1326.04 Transferred to section 81-1328.03.**

**84-1327 Retirement system; false or fraudulent actions; prohibited acts; penalty; denial of benefits.**

Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under the retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The retirement board shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

**Source:** Laws 1963, c. 532, § 27, p. 1676; Laws 1977, LB 39, § 317; Laws 1998, LB 1191, § 76.

**84-1328 Retirement benefits; declared additional to benefits under federal Social Security Act.**

The retirement allowances and benefits shall be in addition to benefits and allowances payable under the provisions of the federal Social Security Act.

**Source:** Laws 1963, c. 532, § 28, p. 1677.

**Cross References**

For other provisions relating to social security, see Chapter 68, article 6.

**84-1329 Limitation of actions.**

Every claim and demand under the State Employees Retirement Act and against the retirement system or the retirement board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

**Source:** Laws 1996, LB 1076, § 42.

**84-1329.01 Transferred to section 84-1504.**

**84-1329.02 Transferred to section 84-1505.**

**84-1329.03 Transferred to section 84-1506.**

**84-1329.04 Retirement system contributions, property, and rights; how treated.**

All contributions to the retirement system, all property and rights purchased with the contributions, and all investment income attributable to the contributions, property, or rights shall be held in trust by the State of Nebraska for the exclusive benefit of members and their beneficiaries and shall only be used to pay benefits to such persons and to pay administrative expenses according to the provisions of the State Employees Retirement Act.

**Source:** Laws 1998, LB 1191, § 74.

**84-1329.05 Termination of system or contributions; effect.**

Upon termination or partial termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all affected members to the amounts credited to the members' accounts shall be nonforfeitable.

**Source:** Laws 1998, LB 1191, § 75.

**84-1330 Elected officials and employees having regular term; sections, when operative.**

The provisions of sections 84-1301 to 84-1331 pertaining to elected officials or other employees having a regular term of office shall be interpreted as to effectuate its general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1963, c. 532, § 30, p. 1677.

**84-1330.01 State Employees Retirement Fund; elected officials and employees having a regular term; sections, when operative.**

The provisions of sections 84-1309, 84-1317, and 84-1330.01 pertaining to elected officials or other employees having a regular term of office shall be so interpreted as to effectuate their general purpose and to take effect as soon as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1967, c. 619, § 3, p. 2075.

**84-1331 Act, how cited.**

Sections 84-1301 to 84-1331 shall be known and may be cited as the State Employees Retirement Act.

**Source:** Laws 1963, c. 532, § 31, p. 1677; Laws 1984, LB 751, § 12; Laws 1991, LB 549, § 73; Laws 1994, LB 833, § 53; Laws 1995, LB 501, § 13; Laws 1996, LB 847, § 50; Laws 1996, LB 1076, § 43; Laws 1997, LB 623, § 45; Laws 1997, LB 624, § 42; Laws 1998, LB 1191, § 77; Laws 1999, LB 687, § 6; Laws 2002, LB 407, § 62; Laws 2002, LB 687, § 32.

**84-1332 City or county employee changed by Legislature to state employee; vesting of prior service retirement benefits; application; vested benefits.**

(1) Any city or county employee who is a member under a city or county employees retirement system, including retirement systems authorized by section 23-1118, and whose status as a city or county employee is changed by the Legislature to that of a state employee shall, upon application to the Public Employees Retirement Board and to the city or county or to the county board of a county having a retirement system authorized by section 23-1118, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may withdraw the amount in his or her employee account prior to his or her retirement as provided in section 84-1321. Each employee's service as a city or county employee, after he or she has attained the minimum age required under the State Employees Retirement System of the State of Nebraska and has completed two years of service, shall be credited as though it were participation in the State Employees Retirement System of the State of Nebraska for purposes of calculating the termination benefits established by section 84-1321. Such service shall be counted as state service for purposes of calculating entitlement to retirement benefits under section 84-1319.

(2) Any city or county employee whose status as a city or county employee is or has been changed by the Legislature to that of a state employee shall be

eligible for immediate participation in the State Employees Retirement System of the State of Nebraska with no minimum period of service required if the minimum age requirement of the State Employees Retirement System of the State of Nebraska is satisfied, or if the minimum age requirement is not satisfied on the date of transfer, the employee shall be eligible to participate at the date he or she satisfies the minimum age requirement.

**Source:** Laws 1973, LB 573, § 1; Laws 1983, LB 604, § 27; Laws 1984, LB 13, § 86; Laws 1986, LB 325, § 22; Laws 1986, LB 311, § 38; Laws 1987, LB 549, § 13.

**84-1333 County employee changed by law to judge; vesting of prior service retirement benefits; vested benefits.**

Any county employee who is a member under a county employees retirement system and whose status as a county employee is changed by the Legislature to that of a judge shall, upon application to the Public Employees Retirement Board and to the county, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have been accrued to the date of transfer, except that the employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits. Any such employee shall be eligible for immediate participation in the Nebraska Retirement Fund for Judges.

**Source:** Laws 1973, LB 573, § 2.

**ARTICLE 14  
PUBLIC MEETINGS**

Section

- 84-1401. Repealed. Laws 1975, LB 325, § 11.
- 84-1402. Repealed. Laws 1975, LB 325, § 11.
- 84-1403. Repealed. Laws 1975, LB 325, § 11.
- 84-1404. Repealed. Laws 1975, LB 325, § 11.
- 84-1405. Repealed. Laws 1975, LB 325, § 11.
- 84-1406. Repealed. Laws 1975, LB 325, § 11.
- 84-1407. Act, how cited.
- 84-1408. Declaration of intent; meetings open to public.
- 84-1409. Terms, defined.
- 84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.
- 84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.
- 84-1412. Meetings of public body; rights of public; public body; powers and duties.
- 84-1413. Meetings; minutes; roll call vote; secret ballot; when.
- 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

**84-1401 Repealed. Laws 1975, LB 325, § 11.**

**84-1402 Repealed. Laws 1975, LB 325, § 11.**

**84-1403 Repealed. Laws 1975, LB 325, § 11.**

**84-1404 Repealed. Laws 1975, LB 325, § 11.**

**84-1405 Repealed. Laws 1975, LB 325, § 11.**

**84-1406 Repealed. Laws 1975, LB 325, § 11.**

**84-1407 Act, how cited.**

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

**Source:** Laws 2004, LB 821, § 34.

**84-1408 Declaration of intent; meetings open to public.**

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

**Source:** Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

Nebraska's public meetings laws do not apply to school board deliberations pertaining solely to disputed adjudicative facts. *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).

The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v.*

*Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990).

The public meetings law is broadly interpreted and liberally construed to obtain the objective of openness in favor of the public, and provisions permitting closed sessions must be narrowly and strictly construed. *Grein v. Board of Education of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

**84-1409 Terms, defined.**

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

**Source:** Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810.

A township is a political subdivision, and as such, a township board is subject to the provisions of the public meetings laws. *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

A county agricultural society is a public body to which the provisions of the Nebraska public meetings law are applicable. *Nixon v. Madison Co. Ag. Soc'y*, 217 Neb. 37, 348 N.W.2d 119 (1984).

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually

taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

The meeting at issue in this case was a "meeting" within the parameters of subsection (2) of this section because it involved the discussion of public business, the formation of tentative policy, or the taking of any action of the public power district. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

Informational sessions in which the governmental body hears reports are briefings. *Johnson v. Nebraska Environmental Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

**84-1410 Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.**

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

- (a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;
  - (b) Discussion regarding deployment of security personnel or devices;
  - (c) Investigative proceedings regarding allegations of criminal misconduct;
- or
- (d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for

the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

**Source:** Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1.

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

The public interest mentioned in this section is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. *Grein v. Board of Education*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Hearing in closed executive session was contrary to this section since there was no showing of necessity or reason under subdivision (1)(a), (b), or (c), but did not result in reversal of

board decision. *Simonds v. Board of Examiners*, 213 Neb. 259, 329 N.W.2d 92 (1983).

Negotiations for the purchase of land need not be conducted at an open meeting but the deliberations of a city council as to whether an offer to purchase real estate should be made should take place in an open meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Public meeting law was not violated where the Board of Regents of the University of Nebraska voted to hold a closed session to consider the university president's resignation, and also discussed the appointment of an interim president during such session. *Meyer v. Board of Regents*, 1 Neb. App. 893, 510 N.W.2d 450 (1993).

**84-1411 Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of

subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and
- (e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

- (a) The territory represented by the member public agencies of the entity or pool covers more than one county;
- (b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

**Source:** Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9.

#### Cross References

**Intergovernmental Risk Management Act**, see section 44-4301.

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Municipal Cooperative Financing Act**, see section 18-2401.

An emergency is "(a)ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with the requirements of this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

When notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m. on the day preceding the meeting is not reasonable advance publicized notice of a meeting as is required by this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Teacher waived right to object to lack of public notice in board of education employment hearing by voluntary partic-

ipation in the hearing without objection. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

An agenda notice which merely stated "work order reports" was an inadequate notice under this section because it did not give interested persons knowledge that plans for a 345 kv transmission line through the district was going to be discussed and voted upon at the meeting. Inadequate agenda notice under this section meant there was a substantial violation of the public meeting laws; however, later actions by the board of directors cured the defects in notice, and such actions were in substantial compliance with the statute. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

### **84-1412 Meetings of public body; rights of public; public body; powers and duties.**

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

**Source:** Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1.  
Effective date July 18, 2008.

To preserve an objection that a public body failed to make documents available at a public meeting as required by subsection (8) of this section, a person who attends a public meeting must not only object to the violation, but must make that

objection to the public body or to a member of the public body. *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

**84-1413 Meetings; minutes; roll call vote; secret ballot; when.**

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

**Source:** Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1.

If a person present at a meeting observes and fails to object to an alleged public meetings laws violation in the form of a failure to conduct rollcall votes before taking actions on questions or motions pending, that person waives his or her right to object at a later date. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 944, 653 N.W.2d 240 (2002).

Subsection (2) of this section does not require the record to state that the vote was by roll call, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. If no intervening rights of third persons have arisen, a board of county commissioners has power to correct the record of the proceedings had at a previous meeting so as to make them speak the truth, particularly where the correction supplies some omitted fact or action and is done not to contradict or change the

original record but to have the record show that a certain action was taken or thing done, which the original record fails to show. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

**84-1414 Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.**

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

**Source:** Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).

Under the Public Meetings Act, a county lacks capacity to maintain an action to declare its official conduct "void" for noncompliance with the act. *County of York v. Johnson*, 230 Neb. 403, 432 N.W.2d 215 (1988).

When a petitioner under this section is successful in the district court, that court may allow attorney fees. *Tracy Corp. II*

v. Nebraska Pub. Serv. Comm., 218 Neb. 900, 360 N.W.2d 485 (1984).

Informal discussions between the Tax Commissioner and the State Board of Equalization in which instructions were clarified, with such clarification leading to the amendment of hearing notices, did not constitute a public meeting subject to the provisions of this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

The right to collaterally attack an order made in contravention of the Public Meeting Act must occur within a period of one year as is specifically provided by this section. *Witt v. School District No. 70*, 202 Neb. 63, 273 N.W.2d 669 (1979).

Statutory change, requiring "publicized notice" for board of education employment hearings, occurring between dates meeting scheduled and conducted, held not to void proceedings. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

Actions by the board of directors were merely voidable under this section, and not void. Pursuant to subsection (3) of this section, the plaintiffs were awarded partial attorney fees because they were successful in having the court declare that the board of directors was in substantial violation of the statute, even though the plaintiffs did not get the relief requested of having the board's actions declared void. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

## ARTICLE 15

### PUBLIC EMPLOYEES RETIREMENT BOARD

#### Section

- 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; expenses; removal.
- 84-1502. Board; chairperson; secretary; election; meetings; compensation.
- 84-1503. Board; duties.
- 84-1503.01. Repealed. Laws 1998, LB 1191, § 85.
- 84-1503.02. Board; duties and responsibilities.
- 84-1503.03. Director; employ personnel; employees; duties.
- 84-1503.04. Internal auditor; duties and responsibilities.
- 84-1504. Deferred compensation; treatment.
- 84-1505. Deferred compensation; treatment; investment.
- 84-1506. Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.
- 84-1506.01. Deferred Compensation Expense Fund; created; use; investment.
- 84-1507. Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.
- 84-1508. Repealed. Laws 1996, LB 847, § 62.
- 84-1509. Administrative services agreement; authorized.
- 84-1510. Administrative services agreement; terms.
- 84-1511. Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.
- 84-1511.01. Board; retirement education and financial planning program; for whom; required information; funding; attendance; fee.
- 84-1512. Board; access to records; director; duties; employer education program.
- 84-1513. Board; members; personal liability.
- 84-1514. Repealed. Laws 2005, LB 364, § 27.

#### **84-1501 Public Employees Retirement Board; created; members; qualifications; appointment; terms; expenses; removal.**

(1) The Public Employees Retirement Board is hereby established.

(2) Prior to January 1, 2005, the board shall consist of seven appointed members and the state investment officer as a nonvoting, ex officio member. Three of the appointed members shall be participants in the retirement systems administered by the board, one of the appointed members shall be a participant in such retirement systems who has retired, and three of the appointed members shall not be employees of the State of Nebraska or any of its political subdivisions. Appointments to such board shall be made by the Governor subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska. The three appointed members who are not employees of the State of Nebraska or any of its political subdivisions shall have at least ten years of experience in the management of a public or private

organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. The members serving on March 27, 1997, shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective. For members whose terms begin on January 1, 2000, one shall serve a three-year term and one shall serve a four-year term or until a successor has been appointed and qualified. For members whose terms begin on January 1, 2001, one shall serve a four-year term and two shall serve five-year terms, or until a successor has been appointed and qualified.

(3)(a) Beginning January 1, 2005, the board shall consist of eight appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Six of the appointed members shall be active or retired participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be an employee of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan. On and after January 1, 2005, any person who is appointed to the board and who is not an employee of the State of Nebraska or any of its political subdivisions shall not own any funds which are administered by the board.

(b) On January 1, 2005, the six appointed members who are participants in the systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Retirement System of the State of Nebraska and shall include one administrator and one teacher as provided in this subdivision. On January 1, 2005, the member of the board who had been a member of the School Retirement System of the State of Nebraska prior to such date shall continue in such position as the member representing the School Retirement System of the State of Nebraska until such member's term expires. A school administrator shall be appointed as a member of the board when the term of the first member of the board expires who was appointed prior to January 1, 2005, and who was not an employee of the State of Nebraska or any of its political subdivisions;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System. On January 1, 2005, the member of the board who had been a member of the Nebraska Judges Retirement System prior to such date shall continue in such position as the member representing the Nebraska Judges Retirement System until such member's term expires;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System. Such member's term shall begin on January 1, 2005;

(iv) One of the appointed members shall be a participant in the Retirement System for Nebraska Counties. On January 1, 2005, the member of the board who had been a member of the Retirement System for Nebraska Counties prior to such date shall continue in such position as the member representing the Retirement System for Nebraska Counties until such member's term expires; and

(v) One of the appointed members shall be a participant in the State Employees Retirement System of the State of Nebraska. On January 1, 2005, the member of the board who had been a member of the State Employees

Retirement System prior to such date shall continue in such position as the member representing the State Employees Retirement System until such member's term expires.

(c) Appointments to the board on and after January 1, 2005, shall be made by the Governor and shall be subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska.

(4) All members appointed on and after January 1, 2002, shall serve for terms of five years or until a successor has been appointed and qualified. The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

**Source:** Laws 1971, LB 987, § 1; Laws 1973, LB 250, § 1; Laws 1975, LB 36, § 1; Laws 1981, LB 204, § 216; Laws 1987, LB 59, § 1; Laws 1989, LB 418, § 1; Laws 1996, LB 847, § 51; Laws 1997, LB 623, § 46; Laws 2004, LB 1097, § 38; Laws 2005, LB 364, § 20.

**84-1502 Board; chairperson; secretary; election; meetings; compensation.**

(1) Within thirty days after its appointment, the Public Employees Retirement Board shall meet and select a chairperson and secretary. Thereafter, the chairperson and the secretary shall be elected in January of each year.

(2) The board shall meet upon call of the chairperson or upon the request of three members of the board filed with the board office. Meetings of the board shall be held in this state and may be held by telecommunication equipment if the requirements of the Open Meetings Act are met.

(3) The members of the board, except the state investment officer, shall be paid fifty dollars per diem, and all members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as board members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1971, LB 987, § 2; Laws 1986, LB 311, § 39; Laws 2004, LB 821, § 41; Laws 2005, LB 503, § 18.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**84-1503 Board; duties.**

(1) It shall be the duty of the Public Employees Retirement Board:

(a) To administer the retirement systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The director shall be qualified by training and have at least five years of experience in the administration of a qualified public or private employee retirement plan. The director shall not be a member of the

board. The salary of the director shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law;

(d) To administer the deferred compensation program authorized in section 84-1504;

(e) To hire an attorney, admitted to the Nebraska State Bar Association, to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection;

(f) To hire an internal auditor to perform the duties described in section 84-1503.04 who meets the minimum standards as described in section 84-304.03;

(g) To adopt and implement procedures for reporting information by employers, as well as testing and monitoring procedures in order to verify the accuracy of such information. The information necessary to determine membership shall be provided by the employer. The board shall adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision. Nothing in this subdivision shall be construed to require the board to conduct onsite audits of political subdivisions for compliance with statutes, rules, and regulations governing the retirement systems listed in subdivision (1)(a) of this section regarding membership and contributions; and

(h) To prescribe and furnish forms for the public retirement system plan reports required to be filed pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987 and to notify the Nebraska Retirement Systems Committee of the Legislature of the failure of any governmental entity to file such reports.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) To determine, based on information provided by the employer, the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations for the management of the board;

(d) To keep a complete record of all proceedings taken at any meeting of the board;

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the

requesting entity, results are provided to the board upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once in every three years, unless the board determines that such a process would not be cost effective under the circumstances and that the actuarial services performed have been satisfactory, in which case the contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to three additional years. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall occur beginning on or after July 1, 2005, and at intervals of not less than five years and not more than fifteen years and shall be in such amounts as the Legislature shall direct;

(g) To adopt and promulgate rules and regulations to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which shall include, but not be limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 2007, and from time to time thereafter at the request of the Nebraska Retirement Systems Committee, to be completed not more than every four years but not less than every ten years. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. A copy of the compliance audit shall be given to the Governor, the board, and the Nebraska Retirement Systems Committee and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations for the adjustment of contributions or benefits, which shall include, but not be limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; and (iii) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment to contributions or benefits; and

(j) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code. The board shall adopt and promulgate rules and regulations necessary or appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) By March 15 of each year, the board shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee at

a public hearing. The plan shall include, but not be limited to, the board's funding policy, the administrative costs and other fees associated with each fund and plan overseen by the board, member education and informational programs, the director's duties and limitations, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

**Source:** Laws 1971, LB 987, § 3; Laws 1973, LB 216, § 3; Laws 1973, LB 498, § 10; Laws 1979, LB 416, § 3; Laws 1983, LB 70, § 1; Laws 1984, LB 751, § 13; Laws 1986, LB 311, § 40; Laws 1987, LB 549, § 14; Laws 1988, LB 1170, § 22; Laws 1991, LB 549, § 74; Laws 1992, LB 672, § 33; Laws 1994, LB 833, § 54; Laws 1994, LB 1306, § 11; Laws 1995, LB 502, § 3; Laws 1996, LB 847, § 52; Laws 1996, LB 1076, § 44; Laws 1998, LB 1191, § 78; Laws 1999, LB 849, § 33; Laws 2000, LB 1192, § 25; Laws 2001, LB 808, § 21; Laws 2002, LB 407, § 63; Laws 2003, LB 451, § 35; Laws 2005, LB 503, § 19.

#### Cross References

**County Employees Retirement Act**, see section 23-2331.

**Judges Retirement Act**, see section 24-701.01.

**Nebraska State Patrol Retirement Act**, see section 81-2014.01.

**School Employees Retirement Act**, see section 79-901.

**State Employees Retirement Act**, see section 84-1331.

#### **84-1503.01 Repealed. Laws 1998, LB 1191, § 85.**

#### **84-1503.02 Board; duties and responsibilities.**

(1) The appointed members of the Public Employees Retirement Board shall have the responsibility for the administration of the retirement systems pursuant to subdivision (1)(a) of section 84-1503, shall be deemed fiduciaries with respect to the administration of the retirement systems, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section. The nonvoting, ex officio member of the board shall not be deemed a fiduciary.

(2) As fiduciaries, the appointed members of the board shall discharge their duties with respect to the retirement systems solely in the interests of the members and beneficiaries of the retirement systems for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law at the time such duties are discharged. The appointed members of the board shall not have a duty in their official capacity to seek the enhancement of plan benefits through the legislative process if such benefits are not already contained within the plan documents. The appointed members of the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

**Source:** Laws 1996, LB 847, § 53; Laws 2006, LB 1019, § 18.

#### **84-1503.03 Director; employ personnel; employees; duties.**

The director of the Nebraska Public Employees Retirement Systems shall employ qualified personnel as may be required to carry out the duties and responsibilities required under sections 84-1501 to 84-1513. Such employees

shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. The positions of the internal auditor and the attorney hired by the board pursuant to section 84-1503 shall be classified positions covered by the State Personnel System and shall not be noncovered positions under subsection (2) of section 81-1316. The director shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties.

**Source:** Laws 1996, LB 847, § 54; Laws 1997, LB 623, § 48; Laws 2001, LB 408, § 30; Laws 2005, LB 364, § 21; Laws 2005, LB 503, § 21; Laws 2006, LB 1019, § 19.

#### **84-1503.04 Internal auditor; duties and responsibilities.**

The duties and responsibilities of the internal auditor employed by the Public Employees Retirement Board shall be consistent with the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors and include the following:

- (1) Prepare a formal written three-year audit plan and work schedule each year and present them to the board;
- (2) Conduct ongoing reviews of the internal procedures of the Nebraska Public Employees Retirement Systems and recommend improvements to the board;
- (3) Ensure that the Nebraska Public Employees Retirement Systems' internal accounting and operational controls are appropriate and operating correctly and report inconsistencies to the board;
- (4) Examine and evaluate system records and operating procedures; verify compliance with established plans, policies, procedures, and control systems; assure compliance with regulatory and statutory conditions; and assure adherence to generally accepted accounting and auditing principles and report inconsistencies to the board;
- (5) Perform internal auditing functions, including review of contributions received and creditable service granted; review benefit payments for completeness of information, appropriateness, accuracy, and timeliness; verify accuracy of data and financial information reported to the systems' actuary for all applicable plans; and verify accuracy of data and financial information reported to the systems' record keeper for all applicable plans; and
- (6) Develop standards to be used by independent auditors in their review of the practices and procedures used by various employers to provide for employee participation in the respective retirement systems included in subdivision (1)(a) of section 84-1503.

**Source:** Laws 2005, LB 503, § 20.

#### **84-1504 Deferred compensation; treatment.**

(1) The Public Employees Retirement Board, on behalf of the state, may contract with any individual to defer a portion of such individual's compensation or with the Legislative Council to defer any other amount that the Legislative Council agrees to credit to an individual's account pursuant to section 457 of the Internal Revenue Code.

(2) The compensation to be deferred at the election of the individual and any other amount credited on behalf of such individual by the Legislative Council shall not exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) The deferred compensation program shall serve in addition to but not be a part of any existing retirement or pension system provided for state or county employees or any other benefit program.

(4) Any compensation deferred at the election of the individual under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(5) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(6) The state, the board, the state investment officer, the agency, or the county shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(7) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(8) For purposes of this section, individual means (a) any state employee, whether employed on a permanent or temporary basis, full-time or part-time, (b) a person under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges and who has entered into a contract with the state to have compensation deferred prior to August 28, 1999, and (c) any county employee designated as a permanent part-time or full-time employee or elected official whose employer does not offer a deferred compensation plan and who has entered into an agreement pursuant to section 48-1401.

**Source:** Laws 1973, LB 428, § 1; R.S.Supp., 1974, § 84-1329.01; Laws 1975, LB 42, § 2; Laws 1987, LB 549, § 15; Laws 1994, LB 460, § 1; Laws 1996, LB 847, § 55; Laws 1997, LB 623, § 49; Laws 1997, LB 624, § 43; Laws 1998, LB 1191, § 79; Laws 1999, LB 703, § 27; Laws 2001, LB 75, § 2.

**84-1505 Deferred compensation; treatment; investment.**

(1) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. All such assets held in trust shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall be the custodian of the funds and securities of the deferred compensation plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly

authorized by the retirement board. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31 of each year.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

**Source:** Laws 1973, LB 428, § 2; R.S.Supp.,1974, § 84-1329.02; Laws 1994, LB 460, § 2; Laws 1996, LB 847, § 56; Laws 1997, LB 623, § 50; Laws 1998, LB 1191, § 80.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-1506 Deferred compensation; availability and distribution of funds; Deferred Compensation Fund; created.**

(1) Under the deferred compensation plan, any amount shall not be available to the participant or beneficiary prior to (a) the calendar year in which the participant attains age seventy and one-half years, (b) when the participant is separated from service with the state, or (c) when the participant has an unforeseeable emergency as determined by the Public Employees Retirement Board. The deferred compensation plan shall meet the minimum distribution requirements of section 457 of the Internal Revenue Code. Distribution shall be made as provided in subsection (2) of this section or sections 84-1509 and 84-1510.

(2) For amounts under the deferred compensation plan which are not provided for under an administrative services agreement pursuant to section 84-1509, payments and benefits shall be deposited in the Deferred Compensation Fund which is hereby created. The State Treasurer shall make payments to the employees from the Deferred Compensation Fund.

**Source:** Laws 1973, LB 428, § 3; R.S.Supp.,1974, § 84-1329.03; Laws 1979, LB 411, § 2; Laws 1994, LB 460, § 3; Laws 1996, LB 847, § 57.

**84-1506.01 Deferred Compensation Expense Fund; created; use; investment.**

All expenses necessary in connection with the administration and operation of the deferred compensation plan authorized in section 84-1504 shall be paid from the Deferred Compensation Expense Fund which is hereby created. The fund shall be credited with the proportionate share of administration expenses from the deferred compensation plan assets and income as directed by the Public Employees Retirement Board for the proper administration of the plan. Any money in the 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.

**Source:** Laws 1997, LB 623, § 51.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**84-1507 Actuarial reports; statement of actuarial assumptions and methods; actuarial valuations and experience investigations; prepared; actuary; certified by Public Employees Retirement Board.**

All actuarial reports, statements of actuarial assumptions and methods, and actuarial valuations and experience investigations required for any retirement system in Nebraska covering employees of any political subdivision in the state and supported, in whole or in part, by Nebraska tax dollars shall be prepared and signed by an actuary certified as qualified by the Public Employees Retirement Board. Such certification may be applied for by written request to the Public Employees Retirement Board.

**Source:** Laws 1973, LB 297, § 1; R.S.Supp.,1974, § 84-1315.01.

**84-1508 Repealed. Laws 1996, LB 847, § 62.**

**84-1509 Administrative services agreement; authorized.**

The Public Employees Retirement Board may enter into an administrative services agreement with an organization authorized to conduct business in Nebraska and to administer public employee deferred compensation retirement plans. No such agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

**Source:** Laws 1979, LB 411, § 3; Laws 1994, LB 460, § 4; Laws 1996, LB 847, § 58.

**84-1510 Administrative services agreement; terms.**

The agreement authorized by section 84-1509 shall provide:

(1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the state whether on account of retirement, termination of services, total disability, or death;

(2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;

(3) That the organization shall furnish to the board a monthly statement of all disbursements and withholdings as stipulated in the agreement;

(4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;

(5) For the right of the state, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;

(6) Protection to the state against assignment of the agreement or the subletting of work done or services furnished under the agreement;

(7) For termination of the agreement; and

(8) Such other terms as may be agreed upon and which the board determines to be in the best interest of the state and its participating employees.

**Source:** Laws 1979, LB 411, § 4; Laws 1987, LB 549, § 16; Laws 1994, LB 460, § 5.

**84-1511 Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.**

(1) The Public Employees Retirement Board shall establish a comprehensive preretirement planning program for state patrol officers, state employees, judges, county employees, and school employees who are members of the retirement systems established pursuant to the Class V School Employees Retirement Act, the County Employees Retirement Act, the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, and the State Employees Retirement Act. The program shall provide information and advice regarding the many changes employees face upon retirement including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(2) The preretirement planning program shall be available to all employees who have attained the age of fifty or are within five years of qualifying for retirement or early retirement under their retirement systems.

(3) The preretirement planning program shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to the employee, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board deems valuable in assisting public employees in the transition from public employment to retirement.

(4) The board shall work with the Department of Health and Human Services, the personnel division of the Department of Administrative Services, employee groups, and any other governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) Funding to cover the expense of the preretirement planning program shall be charged back to each retirement fund on a pro rata share based on the number of employees in each plan.

(6) The employer shall provide each eligible employee leave with pay to attend up to two preretirement planning programs. For purposes of this subsection, leave with pay shall mean a day off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than twice, but such leave shall be at the expense of the employee and shall be at the discretion of the employer. An eligible employee shall not be entitled to attend more than one preretirement planning program per fiscal year prior to actual election of retirement.

(7) A nominal registration fee shall be charged each person attending a preretirement planning program to cover the costs for meals, meeting rooms, or other expenses incurred under such program.

**Source:** Laws 1986, LB 311, § 1; Laws 1992, Third Spec. Sess., LB 14, § 31; Laws 1995, LB 369, § 9; Laws 1996, LB 900, § 1076; Laws 1996, LB 1044, § 979; Laws 1997, LB 624, § 44; Laws 1998, LB 497, § 29.

## Cross References

Class V School Employees Retirement Act, see section 79-978.01.

County Employees Retirement Act, see section 23-2331.

Judges Retirement Act, see section 24-701.01.

Nebraska State Patrol Retirement Act, see section 81-2014.01.

School Employees Retirement Act, see section 79-901.

State Employees Retirement Act, see section 84-1331.

**84-1511.01 Board; retirement education and financial planning program; for whom; required information; funding; attendance; fee.**

(1) The Public Employees Retirement Board shall establish a comprehensive retirement education and financial planning program for all members of the State Employees Retirement System of the State of Nebraska and for all members of the Retirement System for Nebraska Counties, who are under age fifty and not eligible to attend the preretirement planning program established in section 84-1511. The program may be provided to members in a single-day format, or may be provided in equivalent partial-day segments.

(2) The retirement education and financial planning program shall include discussion on the retirement system, financial planning, and budgeting as well as any other planning information valuable to employees before they reach age fifty.

(3) The employer shall provide each eligible employee leave with pay to attend a retirement education and financial planning program twice prior to age fifty. For purposes of this subsection, leave with pay means time off paid by the employer and shall not mean vacation, sick, personal, or compensatory time. Leave with pay shall be provided to each eligible employee in order that the employee may attend the full retirement education and financial planning program, whether it is provided in a single-day program or in the equivalent partial-day segments. An employee may choose to attend a full program more than twice, but leave to attend any additional single-day programs or equivalent segments shall be at the expense of the employee and shall be at the discretion of the employer. An employee may not attend a full program more than once per fiscal year.

(4) Funding to cover the expense of the retirement education and financial planning program shall be charged proportionately to the State Employees Retirement Fund and the County Employees Retirement Fund.

(5) A nominal registration fee shall be charged each person attending a retirement education and financial planning program to cover the costs for meals or meeting rooms or other expenses incurred for the program.

**Source:** Laws 1991, LB 254, § 1; Laws 1995, LB 369, § 10; Laws 2004, LB 1097, § 39.

**84-1512 Board; access to records; director; duties; employer education program.**

(1) The Public Employees Retirement Board, for purposes of administering the various retirement systems under its jurisdiction, shall receive from the Department of Administrative Services and other employers such information as is necessary for the efficient and accurate administration of the systems and shall consult with the Department of Administrative Services and other employers as to the form in which the information is to be presented and received by the board. The information in the records shall be provided by the employers in an accurate and verifiable form, as specified by the director of the Nebraska

Public Employees Retirement Systems. The director shall, from time to time, carry out testing procedures to verify the accuracy of such information. The director shall have access to records maintained by the Department of Administrative Services on the Nebraska employees information system data base for the purpose of obtaining any information which may be necessary to verify the accuracy of information and administer the systems and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. By January 1, 2006, the director shall develop procedures necessary to carry out the testing procedures described in this section and sections 23-2312, 24-704, 79-906, 81-2021, and 84-1305.01.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

**Source:** Laws 1986, LB 311, § 41; Laws 2000, LB 1192, § 26; Laws 2005, LB 503, § 22.

**84-1513 Board; members; personal liability.**

No member of the Public Employees Retirement Board shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to administrative decisions pertaining to the retirement funds of retirement plans administered by the board.

**Source:** Laws 1986, LB 311, § 42; Laws 1998, LB 1191, § 81.

**84-1514 Repealed. Laws 2005, LB 364, § 27.**

**ARTICLE 16**

**NEBRASKA STATE INSURANCE PROGRAM**

Section	
84-1601.	Program; established; coverage; employees of the Nebraska State Patrol; optional coverage.
84-1602.	Program; administration.
84-1603.	Selection of insurance carrier; powers and duties.
84-1604.	Employees eligible.
84-1604.01.	Certain blind persons; eligibility.
84-1605.	Contract for insurance.
84-1606.	Optional health insurance coverage; authorized.
84-1607.	Life insurance contract; extension of special benefits; payment.
84-1608.	Health insurance contract; extension of special benefits; payment.
84-1609.	Special coverages; availability.
84-1610.	Supplemental coverage; restrictions; right to purchase.
84-1611.	Health insurance or health maintenance organization program; state contribution; amount; labor contract; effect.
84-1612.	Contributions by employees; payroll deductions.
84-1613.	State Employees Insurance Fund; created; use; investment.
84-1614.	Program; applicability of law.
84-1615.	Coverage; when provided.
84-1616.	Health and Life Benefit Administration Cash Fund; created; use; investment.
84-1617.	Personnel division of the Department of Administrative Services; report.

**84-1601 Program; established; coverage; employees of the Nebraska State Patrol; optional coverage.**

(1) There is hereby established a program of group life and health insurance for all permanent employees of this state who work one-half or more of the regularly scheduled hours during each pay period, excluding employees of the University of Nebraska, the state colleges, and the community colleges. Such program shall be known as the Nebraska State Insurance Program and shall replace any current program of such insurance in effect in any agency and funded in whole or in part by state contributions.

(2) Temporary employees of the state who have a work assignment of at least six months' duration and who work at least twenty hours per week may purchase health insurance through the Nebraska State Insurance Program. The state shall pay the same proportion of the insurance premium for temporary employees as is established through the collective bargaining process for permanent employees. For purposes of this subsection, temporary employees means individuals (a) employed in the Temporary Employee Pool as described in subdivision (6) of section 81-1307 and (b) hired directly by state agencies. In no event shall a temporary employee mean an individual hired through a private employment agency.

(3) For purposes of sections 84-1601 to 84-1615, health insurance may be construed to include coverage for disability and dental health care services.

(4) Any commissioned employee of the Nebraska State Patrol who on or after July 17, 1986, has reached fifty-one years of age or becomes medically disabled and who will not receive benefits from the federal social security program shall be afforded the opportunity to remain enrolled in the state employees group health insurance program until age sixty-five. Employees electing this option shall be responsible for the entire premium cost, including the state's share, the employee's share, and an administrative fee consistent with that allowed by federal guidelines for continuation of health insurance.

**Source:** Laws 1973, LB 516, § 1; Laws 1974, LB 789, § 1; Laws 1981, LB 244, § 1; Laws 1982, LB 970, § 1; Laws 1984, LB 115, § 1; Laws 1984, LB 705, § 1; Laws 1986, LB 74, § 1; Laws 1987, LB 491, § 1; R.S.1943, (1988), § 44-1620; Laws 1989, LB 303, § 1; Laws 1998, LB 1162, § 85; Laws 1999, LB 113, § 7; Laws 2000, LB 654, § 47.

Public employee benefits to be realized at retirement are not mere gratuities but are deferred compensation. *Omer v. Tagg*, 235 Neb. 527, 455 N.W.2d 815 (1990).

#### **84-1602 Program; administration.**

Sections 84-1601 to 84-1615 shall be administered by the personnel division of the Department of Administrative Services. The Director of Personnel may employ such administrative, clerical, secretarial, and technical assistants and consultants as are required for the administration of such sections.

**Source:** Laws 1973, LB 516, § 2; Laws 1987, LB 491, § 3; R.S.1943, (1988), § 44-1621; Laws 1992, Third Spec. Sess., LB 14, § 32; Laws 1996, LB 1252, § 2; Laws 2000, LB 654, § 48.

#### **84-1603 Selection of insurance carrier; powers and duties.**

The personnel division of the Department of Administrative Services shall select, with the assistance of the Risk Manager and the Chief Negotiator, one or more carriers or combinations of carriers licensed to do insurance business in

Nebraska to serve as administrator of the insurance contract or contracts. Such selection shall be made after open competitive bidding in which any carrier authorized to provide the type or types of insurance coverage involved shall be eligible to participate. The personnel division may develop bid specifications which provide for various forms of plan design and funding methods, including plans of self-insurance or any combination of such methods. The personnel division may utilize such expert technical assistance provided by the Risk Manager, the Chief Negotiator, and other state agencies or outside consultants as may be required to establish and evaluate criteria for selection of carriers. The insurance contract or contracts may be subject to rebidding at any time after the inception of this program at the discretion of the personnel division.

**Source:** Laws 1973, LB 516, § 3; Laws 1981, LB 273, § 7; Laws 1984, LB 880, § 2; Laws 1987, LB 491, § 4; R.S.1943, (1988), § 44-1622; Laws 1989, LB 303, § 3; Laws 1992, Third Spec. Sess., LB 14, § 33; Laws 1996, LB 1252, § 3; Laws 2000, LB 654, § 49.

#### **84-1604 Employees eligible.**

The coverages provided for by sections 84-1601 to 84-1615 shall be afforded to each permanent state employee who works one-half or more of the regularly scheduled hours during each pay period, commencing after thirty days of such employment, and to each temporary employee only as described in subsection (2) of section 84-1601, commencing after thirty days of such employment. Permanent and temporary employees who are employed less than the regularly scheduled hours as defined for a permanent employee shall be entitled to state contributions on a proportionately reduced basis. The life and health insurance coverages provided by sections 84-1601 to 84-1615 shall be totally independent of one another and the loss experience and the rates for the two coverages shall be maintained separate and apart from one another.

**Source:** Laws 1973, LB 516, § 8; Laws 1974, LB 789, § 6; Laws 1979, LB 391, § 2; Laws 1984, LB 13, § 80; Laws 1986, LB 529, § 50; Laws 1987, LB 491, § 7; R.S.1943, (1988), § 44-1627; Laws 1998, LB 1162, § 86.

#### **84-1604.01 Certain blind persons; eligibility.**

Any person who is blind as defined in section 71-8603 and who provides services under contract to the State of Nebraska to a disabled person as defined in section 68-1503 shall be afforded the opportunity to enroll in the state employees group health insurance program until age sixty-five. Eligible persons electing this option shall be responsible for the entire premium cost and an administrative fee consistent with that allowed by federal guidelines for continuation of health insurance.

**Source:** Laws 1998, LB 1073, § 169; Laws 2000, LB 352, § 18.

#### **84-1605 Contract for insurance.**

Out of appropriations made for that purpose, the personnel division of the Department of Administrative Services shall (1) first enter into a contract providing, entirely at state expense, ten thousand dollars of basic life insurance protection and (2) enter into a contract to purchase a contract of group health insurance to be financed by the state to the extent that appropriations made for

that purpose are available and, if necessary, by contributions from each employee. Each such contract shall provide insurance coverage for each employee specified in section 84-1601. Participation in the program of group health and life insurance shall be optional with the employee.

**Source:** Laws 1973, LB 516, § 4; Laws 1974, LB 789, § 2; Laws 1981, LB 556, § 2; Laws 1981, LB 273, § 8; Laws 1987, LB 491, § 5; R.S.1943, (1988), § 44-1623; Laws 1989, LB 303, § 5; Laws 1992, Third Spec. Sess., LB 14, § 34; Laws 1996, LB 1252, § 4; Laws 2000, LB 654, § 50.

**84-1606 Optional health insurance coverage; authorized.**

The personnel division of the Department of Administrative Services may elect to offer a group health insurance option to employees subject to sections 84-1601 to 84-1615. Such benefits shall be offered at the rates listed in section 84-1611, and additional contributions necessary to cover the costs of such benefits may be required from employees.

**Source:** Laws 1983, LB 632, § 2; R.S.1943, (1988), § 44-1622.01; Laws 1989, LB 303, § 4; Laws 1992, Third Spec. Sess., LB 14, § 35; Laws 1993, LB 325, § 1; Laws 1996, LB 1252, § 5; Laws 2000, LB 654, § 51.

**84-1607 Life insurance contract; extension of special benefits; payment.**

The group life insurance contract or contracts may permit the extension of special benefits, such as accidental death and dismemberment benefits, amounts of life insurance in addition to the amount provided in section 84-1605, and the extension of coverage to dependents. Any coverage under this section shall be borne solely by the employee.

**Source:** Laws 1973, LB 516, § 5; Laws 1974, LB 789, § 3; R.S.1943, (1988), § 44-1624.

**84-1608 Health insurance contract; extension of special benefits; payment.**

The group health insurance contract or contracts may permit the extension of special benefits, such as insurance over and above that provided by the basic coverage specified in section 84-1605, dental health insurance, disability insurance, accidental death and dismemberment benefits, disability income replacement benefits, and the extension of coverage to dependents. Any coverage under this section may be borne solely by the employee.

**Source:** Laws 1973, LB 516, § 6; Laws 1974, LB 789, § 4; Laws 1981, LB 244, § 2; Laws 1983, LB 632, § 3; Laws 1984, LB 115, § 2; R.S.1943, (1988), § 44-1625.

**84-1609 Special coverages; availability.**

The special coverages permitted by sections 84-1607 and 84-1608 shall be made available uniformly to all employees, but each employee shall retain the option to choose the special coverage or coverages which he or she desires or to reject all such special coverages.

**Source:** Laws 1973, LB 516, § 7; Laws 1974, LB 789, § 5; Laws 1987, LB 491, § 6; R.S.1943, (1988), § 44-1626.

**84-1610 Supplemental coverage; restrictions; right to purchase.**

No agency shall provide for its employees any program of life or health insurance supplementary to that provided under sections 84-1601 to 84-1615, except as provided in sections 84-1601, 84-1607, and 84-1608. The provisions of this section shall not deny an employee the right to purchase through payroll deduction entirely at his own expense individual life and health insurance programs other than those provided under sections 84-1601 to 84-1615.

**Source:** Laws 1973, LB 516, § 9; Laws 1974, LB 789, § 7; R.S.1943, (1988), § 44-1628.

**84-1611 Health insurance or health maintenance organization program; state contribution; amount; labor contract; effect.**

(1) For any contract period or periods beginning on or after July 1, 1995, the state shall make the following contributions from the various funds toward payment of a health insurance or health maintenance organization program which may include coverage for dependents:

(a) For any employee with a service date of May 4, 1993, or after, the state shall pay seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee. For any plan effective on or after July 1, 1995, and for any employee with a service date of May 4, 1993, or after, the state shall pay seventy-nine percent of the total cost of the plan as of the effective date of the plan for the option and coverage chosen by the employee;

(b) For any employee who has a change in plan, option, or coverage after April 25, 1993, the state shall pay seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee. For any plan effective on or after July 1, 1995, and for any employee who has a change in plan, option, or coverage after April 25, 1993, the state shall pay seventy-nine percent of the total cost of the plan as of the effective date of the plan for the option and coverage chosen by the employee;

(c) For any employee who is required to change health carriers because of the termination of the plan and who does not change either the option or coverage, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage as the plan chosen by the employee, subject to the limitations in subsection (2) of this section;

(d) For any employee who chooses any coverage of the preferred provider organization plan, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage chosen by the employee; and

(e) For all other employees, except as limited in subsection (2) of this section, the state shall pay an amount equal to seventy-nine percent of the total cost which was in effect on July 1, 1994, for the optional major medical plan for the same coverage as the plan chosen by the employee.

(2)(a) Under no circumstances shall the state's contribution exceed the actual cost of the plan, option, and coverage chosen by the employee.

(b) The state's contribution shall not be less than seventy-nine percent of the total cost which was in effect on July 1, 1994, for the plan, option, and coverage chosen by the employee.

(3) For purposes of this section, (a) coverage shall mean the rate categories of one-party, two-party, four-party, and family, as offered under any contract entered into for medical benefits, (b) option shall mean one of the choices of levels of medical and other benefits offered by a carrier, and (c) service date shall mean the date maintained in the Nebraska employees information system and used for calculating vacation and sick leave benefits.

(4) If any provision of this section varies from the terms of a labor contract, the terms of the labor contract shall prevail for the employees covered by the labor contract.

**Source:** Laws 1976, LB 971, § 1; Laws 1977, LB 545, § 1; Laws 1978, LB 771, § 1; Laws 1978, LB 923, § 1; Laws 1981, LB 556, § 1; Laws 1982, LB 970, § 2; Laws 1983, LB 632, § 1; Laws 1984, LB 880, § 1; Laws 1987, LB 491, § 2; Laws 1987, LB 783, § 1; R.S.1943, (1988), § 44-1620.01; Laws 1989, LB 303, § 2; Laws 1991, LB 846, § 1; Laws 1993, LB 325, § 2; Laws 1995, LB 395, § 4.

#### **84-1612 Contributions by employees; payroll deductions.**

All contributions by employees under sections 84-1601 to 84-1615 shall be made by payroll deductions. As each new employee becomes eligible for coverage under sections 84-1601 to 84-1615, the Director of Administrative Services shall certify the amount to be deducted each pay period from the employee's pay under sections 84-1601 to 84-1615. When there is any change in the amount of required contribution, such change shall be similarly certified. Such amount shall be deducted each pay period by the director.

**Source:** Laws 1973, LB 516, § 10; Laws 1987, LB 491, § 8; R.S.1943, (1988), § 44-1629.

#### **84-1613 State Employees Insurance Fund; created; use; investment.**

The State Employees Insurance Fund is established. The fund shall be administered by the personnel division of the Department of Administrative Services. All funds appropriated to pay the state's share of the cost of the coverages provided by sections 84-1601 to 84-1615 and all payroll deductions made under sections 84-1601 to 84-1615 shall be credited to the fund. The division shall make premium payments to the carrier, carriers, or combinations of carriers selected under section 84-1603 from this fund.

Any funds in the State Employees Insurance 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.

On or before October 1, 2001, the State Treasurer shall transfer one million five hundred thousand dollars from the excess state share of life insurance history money of the State Employees Insurance Fund to the Workers' Compensation Claims Revolving Fund.

**Source:** Laws 1973, LB 516, § 11; Laws 1981, LB 273, § 9; R.S.1943, (1988), § 44-1630; Laws 1989, LB 303, § 6; Laws 1994, LB 1066, § 133; Laws 1996, LB 1252, § 6; Laws 2000, LB 654, § 52; Laws 2001, LB 541, § 7.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**84-1614 Program; applicability of law.**

Any group insurance provided by sections 84-1601 to 84-1615 shall be subject to the provisions of Chapter 44, article 16, except that if any provision of sections 84-1601 to 84-1615 is in conflict therewith, the provisions of sections 84-1601 to 84-1615 shall govern.

**Source:** Laws 1973, LB 516, § 12; R.S.1943, (1988), § 44-1631.

**84-1615 Coverage; when provided.**

Coverages under sections 84-1601 to 84-1615 shall be provided commencing January 1, 1974.

**Source:** Laws 1973, LB 516, § 13; R.S.1943, (1988), § 44-1632.

**84-1616 Health and Life Benefit Administration Cash Fund; created; use; investment.**

The Health and Life Benefit Administration Cash Fund is created. The fund shall consist of payments made by individuals eligible for program benefits, transfers from the State Employees Insurance Fund for administrative and operation expenses as authorized by the Legislature, and interest earnings as authorized by the Legislature. The fund shall be used by the personnel division of the Department of Administrative Services to administer the provisions of the federal Public Health Service Act and for the administration of the section 125 plan. Any money in the 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.

**Source:** Laws 1997, LB 314, § 22; Laws 2000, LB 654, § 53.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**84-1617 Personnel division of the Department of Administrative Services; report.**

The personnel division of the Department of Administrative Services shall provide an annual report to the Clerk of the Legislature. The report shall include the following information based on the prior fiscal year: (1) The number of temporary employees employed by the state; (2) the number of such temporary employees who were eligible for health insurance coverage pursuant to section 84-1601; (3) the number of such temporary employees who elected coverage; and (4) the average length of health insurance coverage for those temporary employees who elected coverage.

**Source:** Laws 1998, LB 1162, § 84.



## CHAPTER 85

### STATE UNIVERSITY, STATE COLLEGES, AND POSTSECONDARY EDUCATION

Article.

1. University of Nebraska. 85-101 to 85-1,142.
2. Research Facilities. 85-201 to 85-222.
3. State Colleges. 85-301 to 85-328.
4. Campus Buildings and Facilities. 85-401 to 85-425.
5. Tuition and Fees at State Educational Institutions. 85-501 to 85-508.
6. Public Institutions of Higher Education.
  - (a) Dismissal or Expulsion of Faculty or Students. 85-601 to 85-605.
  - (b) Retirement. 85-606, 85-606.01.
  - (c) Admission. 85-607.
7. Independent Institutions of Higher Education. Unconstitutional.
8. Research Centers.
  - (a) Eugene C. Eppley Institute for Research in Cancer and Allied Diseases. 85-801 to 85-804.
  - (b) Regional Radiation Health Center. 85-805 to 85-807.
9. Postsecondary Education.
  - (a) General Provisions. 85-901 to 85-916.02.
  - (b) Role and Mission Assignments. 85-917 to 85-967.
  - (c) Postsecondary Education Information System. 85-968 to 85-979. Transferred or Repealed.
  - (d) State Scholarship Award Program. 85-980 to 85-9,102.01. Transferred or Repealed.
  - (e) Program Review. 85-9,103 to 85-9,109. Repealed.
  - (f) Athletic Grant-in-aid. 85-9,110.
  - (g) Legislative Study. 85-9,111 to 85-9,116. Repealed.
  - (h) Scholarship Assistance Program. 85-9,117 to 85-9,132.01. Repealed.
  - (i) Financial Aid. 85-9,133 to 85-9,139.03.
  - (j) Postsecondary Education Award Program Act. 85-9,140 to 85-9,162. Repealed.
  - (k) Transition Coordinating Commission for Postsecondary Education. 85-9,163 to 85-9,165. Repealed.
  - (l) Nebraska Equal Opportunity in Postsecondary Education Act. 85-9,166 to 85-9,176.
  - (m) Student Diversity Scholarship Program Act. 85-9,177 to 85-9,182.
  - (n) Education Roundtable. 85-9,183 to 85-9,189. Repealed.
10. Nebraska Safety Center. 85-1001 to 85-1013.
11. Higher Education.
  - (a) Out-of-State Institutions. 85-1101 to 85-1104.
  - (b) Private Colleges. 85-1105 to 85-1111.
12. Nebraska Collegiate Athletic Association Procedures Act. 85-1201 to 85-1210.
13. Midwestern Higher Education Compact. 85-1301, 85-1302.
14. Coordinating Commission for Postsecondary Education.
  - (a) Coordinating Commission for Postsecondary Education Act. 85-1401 to 85-1420.
  - (b) Nebraska Educational Data System. 85-1421 to 85-1427.
  - (c) Legislative Priorities. 85-1428, 85-1429.
15. Community Colleges. 85-1501 to 85-1542.
16. Private Postsecondary Career Schools. 85-1601 to 85-1658.
17. Nebraska Educational Finance Authority. 85-1701 to 85-1763.
18. Educational Savings Plan Trust. 85-1801 to 85-1814.
19. Nebraska Scholarship Act. 85-1901 to 85-1920.
20. Community Scholarship Foundation Program Act. Repealed.
21. Access College Early Scholarship Program Act. 85-2101 to 85-2108.

## UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Article.

22. Community College Foundation and Equalization Aid Act. 85-2201 to 85-2229.

### Cross References

#### Constitutional provisions:

Coordinating Commission for Postsecondary Education, see Article VII, section 14, Constitution of Nebraska.

Educational funds:

Diversion of, prohibited, see Article VII, section 8, Constitution of Nebraska.

Invested, how, see Article VII, section 8, Constitution of Nebraska.

Perpetual funds, enumerated, see Article VII, section 7, Constitution of Nebraska.

Educational Lands and Funds, Board of, see Article VII, section 6, Constitution of Nebraska.

Educational lands, sold only at public auction, see Article VII, section 6, Constitution of Nebraska.

General government of state colleges, see Article VII, section 13, Constitution of Nebraska.

General government of the University of Nebraska, vested in the Board of Regents of the University of Nebraska, see Article VII, section 10, Constitution of Nebraska.

Regents, election, districts, see Article VII, section 10, Constitution of Nebraska.

Sectarian instruction, religious test, none, see Article VII, section 11, Constitution of Nebraska.

**Annual property inventory requirements**, see section 81-1118.02.

**Basic workweek of state employees**, see Chapter 84, article 10.

**Budget estimates required**, see section 81-132.

**Diploma of high school equivalency**, acceptance for enrollment, see section 79-733.

**Equal Opportunity in Education Act, Nebraska**, see section 79-2,114.

**Flag display requirements**, see section 79-707 et seq.

**For requirements as to public meetings**, see Chapter 84, article 14, and section 85-104.

**Motor Vehicles**, distinctive marking required, see section 81-1021.

**Nebraska statutes**, distribution, see section 49-617.

**School lands and funds**, see Chapter 72, article 2.

**School or university land sold on credit**, tax sale of, see section 77-1848.

**Social Security Act**, provisions relative to, see Chapter 68, article 6.

**State Building Fund**, see section 72-1005.

**Surplus property**, purchase from federal government authorized, see sections 81-907 to 81-909.

**Tuition assistance**, member of Active Selected Reserve, see sections 80-901 to 80-903.

**Uniform accounting system**, see section 81-1111.

## ARTICLE 1

### UNIVERSITY OF NEBRASKA

#### Cross References

#### Constitutional provision:

Regents, election, districts, see Article VII, section 10, Constitution of Nebraska.

**Certification of seeds and plant parts**, see sections 81-2,149 to 81-2,154.

**Heating plant**, heat, light, and power, how supplied, cost, see sections 81-1108.26 to 81-1108.30.

**High school equivalency diploma**, acceptance, see section 79-733.

**Insect pest and plant disease control**, cooperation with county boards, see section 23-116.

**Retirement annuity contracts**, authority to purchase, see section 85-606.01.

**School accreditation committee**, director of admissions is member, see section 79-703.

**State Capitol and other state buildings and institutions**, heat, light, and power furnished by university, see sections 81-1108.26 to 81-1108.30.

**State Department of Education**, loans to needy students, source, limitations, see section 79-2,106.

**State fairgrounds and buildings**, electric current for, regents may furnish, see section 81-1108.30.

**Tractor tests**, see Chapter 2, article 27.

#### Section

- 85-101. University of Nebraska; establishment; name.
- 85-102. University of Nebraska; object.
- 85-102.01. University of Nebraska; composition.
- 85-102.02. Universities; program responsibilities.
- 85-103. University of Nebraska; government; Board of Regents; election; vacancies.
- 85-103.01. University of Nebraska; Board of Regents; designation of districts.
- 85-103.02. University of Nebraska; Board of Regents; districts; description; basis.
- 85-104. Board of Regents; meetings; open to public; closed sessions; record of meetings; expenses.
- 85-105. Board of Regents; organization; property; powers.
- 85-106. Board of Regents; general powers; duties; retirement benefits; requirements.
- 85-106.01. University of Nebraska; new capital construction; appropriation; percentage used for works of art; when.

## UNIVERSITY OF NEBRASKA

Section	
85-106.02.	Board of Regents; works of art; duties.
85-106.03.	Board of Regents; insure compliance with sections; manner.
85-106.04.	Retirement benefits; certain employees; cost-of-living adjustment; how computed.
85-106.05.	Board of Regents; insurance program for student athletes; duties.
85-106.06.	Board of Regents; chief executive officer; chief administrative officers; appointment.
85-107.	University of Nebraska; colleges and institute; enumerated; section, how construed.
85-107.01.	Repealed. Laws 1991, LB 663, § 137.
85-108.	Colleges; government; program of instruction; approval.
85-109.	Chairs of instruction; faculty; duties in more than one college.
85-110.	Repealed. Laws 2003, LB 68, § 11.
85-111.	Faculty; rules and regulations; problems of state interest.
85-111.01.	Repealed. Laws 1979, LB 194, § 3.
85-112.	University of Nebraska; admission requirements; powers of Board of Regents.
85-112.01.	Repealed. Laws 2003, LB 68, § 11.
85-112.02.	Repealed. Laws 2003, LB 68, § 11.
85-113.	Repealed. Laws 2003, LB 68, § 11.
85-114.	Agricultural, engineering, and scientific courses; attendance.
85-115.	Textbooks; sale; price.
85-116.	Students; equal privileges.
85-117.	Degrees, diplomas; powers of Board of Regents.
85-118.	Buildings; plans; approval.
85-119.	Repealed. Laws 1981, LB 545, § 52.
85-120.	University of Nebraska Institute of Agriculture and Natural Resources; model farm; alienation prohibited.
85-121.	Nebraska College of Technical Agriculture at Curtis; creation; location; purpose.
85-121.01.	Repealed. Laws 1988, LB 1042, § 5.
85-121.02.	Repealed. Laws 1988, LB 1042, § 5.
85-121.03.	Appropriation required.
85-121.04.	Program review; required.
85-121.05.	Repealed. Laws 2003, LB 7, § 9.
85-122.	University funds; designation; investment; disbursements; travel expenses.
85-122.01.	United States Agricultural Extension Fund; source; disbursement.
85-123.	Permanent Endowment Fund; source; accounts; investment.
85-123.01.	University Trust Fund, defined; investment; deposited with State Treasurer.
85-124.	Temporary University Fund; source; use.
85-125.	University Cash Fund; source; use.
85-126.	United States Morrill Fund; source; use.
85-127.	United States Experiment Station Fund; source; use.
85-128.	University funds; State Treasurer; custodian; disbursement.
85-129.	University funds; State Treasurer; duties.
85-130.	University funds; Board of Regents; disbursements.
85-131.	University funds; disbursements; how made.
85-132.	Gifts and bequests; acceptance.
85-133.	Board of Regents; eminent domain; procedure.
85-134.	University of Nebraska Medical Center Medical Education Revolving Fund; established; use; investment.
85-135.	Repealed. Laws 1951, c. 101, § 127.
85-136.	Repealed. Laws 1951, c. 101, § 127.
85-137.	Repealed. Laws 1951, c. 101, § 127.
85-138.	Repealed. Laws 1951, c. 101, § 127.
85-139.	Repealed. Laws 2003, LB 68, § 11.
85-140.	Repealed. Laws 1953, c. 362, § 2.
85-141.	Repealed. Laws 1953, c. 362, § 2.
85-142.	Repealed. Laws 1953, c. 362, § 2.

## UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section	
85-143.	Repealed. Laws 1953, c. 362, § 2.
85-144.	Repealed. Laws 1953, c. 362, § 2.
85-145.	Agricultural experiment stations; acceptance of provisions of federal act.
85-146.	Agricultural experiment stations; federal aid; acceptance.
85-147.	Agriculture and mechanic arts; acceptance of federal act.
85-148.	Agriculture and mechanic arts; appropriation and use of money received.
85-149.	Agriculture and mechanic arts; Board of Regents; powers and duties.
85-150.	Cooperative extension work; federal aid; acceptance; disbursement.
85-151.	Cooperative extension work; federal aid; acceptance; payment of warrants.
85-152.	Repealed. Laws 1953, c. 363, § 1.
85-153.	Repealed. Laws 1953, c. 363, § 1.
85-154.	Repealed. Laws 1953, c. 363, § 1.
85-155.	Repealed. Laws 1953, c. 363, § 1.
85-156.	Repealed. Laws 1987, LB 656, § 6.
85-157.	Repealed. Laws 1987, LB 656, § 6.
85-158.	Repealed. Laws 1987, LB 656, § 6.
85-159.	Repealed. Laws 1987, LB 656, § 6.
85-160.	Repealed. Laws 1987, LB 656, § 6.
85-161.	Nebraska Forest Service; mission; core programs; duties.
85-162.	Nebraska Forest Service; legislative intent.
85-162.01.	State Forester; appointment; duties.
85-162.02.	State Forester; powers.
85-162.03.	State Forester; cooperate with other agencies.
85-162.04.	State Forester; personnel; employment.
85-162.05.	Board of Regents; State Forester; duties.
85-163.	Conservation and Survey Division; creation; duties.
85-163.01.	Repealed. Laws 1967, c. 585, § 13.
85-163.02.	Transferred to section 85-162.01.
85-163.03.	Transferred to section 85-162.02.
85-163.04.	Transferred to section 85-162.03.
85-163.05.	Transferred to section 85-162.04.
85-163.06.	Transferred to section 85-162.05.
85-163.07.	Repealed. Laws 1985, LB 10, § 1.
85-163.08.	Repealed. Laws 1985, LB 10, § 1.
85-164.	Conservation and Survey Division; powers; director; expenses.
85-165.	Conservation and Survey Division; agreements with federal departments.
85-166.	Repealed. Laws 2000, LB 1135, § 34.
85-167.	Bessey Memorial Fund; Board of Regents; duties.
85-168.	Bessey Memorial Fund; purpose; amount; investment.
85-169.	Bessey Memorial Fund; gifts; bequests; acceptance.
85-170.	Bessey Memorial Fund; investment; disbursement.
85-171.	Bessey Memorial Fund; income; use.
85-172.	Repealed. Laws 2003, LB 68, § 11.
85-172.01.	Repealed. Laws 1965, c. 578, § 2.
85-172.02.	Repealed. Laws 1965, c. 578, § 2.
85-172.03.	Repealed. Laws 1967, c. 402, § 1.
85-172.04.	Repealed. Laws 1967, c. 402, § 1.
85-173.	Defunct colleges; records; University of Nebraska; depository.
85-174.	Defunct colleges; records; duties of registrar.
85-175.	Defunct colleges; records; duty to deposit.
85-176.	College of Law; state publications; number furnished free.
85-177.	College of Law; state publications; additional copies; requisition.
85-178.	Repealed. Laws 2003, LB 68, § 11.
85-179.	College of Medicine; care and rehabilitation of children with disabilities; interchange of facilities for teaching and treatment.
85-179.01.	College of Medicine; physicians' assistants and associates; program for education and training; establish.
85-179.02.	College of Medicine; physicians' assistant or associate, defined.
85-179.03.	College of Medicine; physicians' assistants or associates; Board of Regents; powers.

UNIVERSITY OF NEBRASKA

Section	
85-179.04.	Transferred to section 71-1,107.15.
85-179.05.	Transferred to section 71-1,107.16.
85-179.06.	Transferred to section 71-1,107.17.
85-179.07.	Transferred to section 71-1,107.18.
85-179.08.	Transferred to section 71-1,107.19.
85-179.09.	Transferred to section 71-1,107.20.
85-179.10.	Transferred to section 71-1,107.21.
85-179.11.	Transferred to section 71-1,107.22.
85-179.12.	Transferred to section 71-1,107.23.
85-179.13.	Transferred to section 71-1,107.24.
85-179.14.	Transferred to section 71-1,107.25.
85-179.15.	Transferred to section 71-1,107.26.
85-179.16.	Transferred to section 71-1,107.27.
85-179.17.	Transferred to section 71-1,107.28.
85-179.18.	Transferred to section 71-1,107.29.
85-180.	Repealed. Laws 1985, LB 204, § 4.
85-180.01.	Repealed. Laws 1985, LB 204, § 4.
85-180.02.	Repealed. Laws 1985, LB 204, § 4.
85-180.03.	Repealed. Laws 1985, LB 204, § 4.
85-180.04.	Repealed. Laws 1985, LB 204, § 4.
85-180.05.	Repealed. Laws 1985, LB 204, § 4.
85-180.06.	Repealed. Laws 1983, LB 533, § 6.
85-180.07.	Repealed. Laws 1985, LB 204, § 4.
85-180.08.	Repealed. Laws 1985, LB 204, § 4.
85-180.09.	Repealed. Laws 1985, LB 204, § 4.
85-180.10.	Repealed. Laws 1985, LB 204, § 4.
85-180.11.	Repealed. Laws 1983, LB 533, § 6.
85-180.12.	Repealed. Laws 1985, LB 204, § 4.
85-180.13.	Veterinary medicine and surgery; cooperative program authorized; cooperative agreement; requirements.
85-180.14.	Cooperative veterinary medicine program; Board of Regents; Coordinating Commission for Postsecondary Education; powers.
85-181.	Repealed. Laws 1991, LB 663, § 137.
85-182.	Repealed. Laws 1988, LB 802, § 41.
85-183.	Repealed. Laws 1988, LB 802, § 41.
85-184.	Repealed. Laws 2003, LB 68, § 11.
85-185.	Repealed. Laws 2003, LB 68, § 11.
85-186.	Repealed. Laws 1988, LB 802, § 41.
85-187.	Repealed. Laws 1988, LB 802, § 41.
85-188.	Repealed. Laws 1988, LB 802, § 41.
85-189.	Repealed. Laws 1988, LB 802, § 41.
85-190.	Repealed. Laws 2003, LB 68, § 11.
85-191.	Repealed. Laws 1988, LB 802, § 41.
85-192.	University of Nebraska at Omaha Cash Fund; University of Nebraska at Omaha Trust Fund; created; purposes; disbursements; investment.
85-193.	Repealed. Laws 1988, LB 802, § 41.
85-194.	University of Nebraska at Omaha; laws applicable.
85-195.	Transferred to section 85-606.01.
85-196.	Repealed. Laws 1971, LB 208, § 1.
85-197.	Repealed. Laws 1971, LB 208, § 1.
85-198.	Repealed. Laws 1971, LB 208, § 1.
85-199.	Repealed. Laws 1971, LB 208, § 1.
85-1,100.	Repealed. Laws 1987, LB 13, § 1.
85-1,101.	Repealed. Laws 1972, LB 1433, § 7.
85-1,102.	Repealed. Laws 1972, LB 1433, § 7.
85-1,103.	University of Nebraska, College of Medicine; travel expense of senior medical students, residents, interns; conditions.
85-1,104.	University of Nebraska Institute of Agriculture and Natural Resources; established; administration.
85-1,104.01.	Cooperative Extension Service; employ aquaculturist.

§ 85-101 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

- Section  
85-1,105. University of Nebraska Institute of Agriculture and Natural Resources; vice chancellor; duties.  
85-1,106. Board of Regents; lands in Lancaster County; power to sell; Agricultural Field Laboratory Fund; created; use.  
85-1,107. Animal Research and Diagnosis Revolving Fund; created.  
85-1,108. Animal Research and Diagnosis Revolving Fund; how funded.  
85-1,109. Animal Research and Diagnosis Revolving Fund; uses.  
85-1,110. Diagnostic laboratory of Animal Health Research Center; fee schedule for services.  
85-1,111. University Buildings Renovation and Land Acquisition Fund; created; authorized uses.  
85-1,112. Buildings renovation and land acquisition projects; Board of Regents; powers.  
85-1,113. University Facilities Fund; created; authorized uses.  
85-1,114. University facilities construction projects; Board of Regents; powers.  
85-1,115. Lied Center for Performing Arts; Board of Regents; powers.  
85-1,116. University Facility Improvement Fund; created; authorized uses.  
85-1,117. Renovation of Morrill Hall; Board of Regents; powers.  
85-1,118. Repealed. Laws 2003, LB 68, § 11.  
85-1,119. Kearney State College; transfer of property, obligations, and employees; collective bargaining.  
85-1,120. Repealed. Laws 2003, LB 68, § 11.  
85-1,121. Repealed. Laws 2003, LB 68, § 11.  
85-1,122. University of Nebraska at Kearney; provisions applicable.  
85-1,123. University of Nebraska at Kearney Cash Fund; University of Nebraska at Kearney Trust Fund; created; use; investment.  
85-1,124. Repealed. Laws 2003, LB 68, § 11.  
85-1,125. Repealed. Laws 2000, LB 1379, § 7.  
85-1,126. Risk-loss trusts authorized; requirements.  
85-1,127. Risk-loss trust; applicability of provisions; Attorney General; State Claims Board; duties.  
85-1,128. University of Nebraska Eppley Science Hall Construction Fund; created; use; investment.  
85-1,129. University of Nebraska Eppley Science Hall Construction Fund; legislative intent.  
85-1,130. University of Nebraska Medical Center; primary care practitioners and other practitioners; develop plan.  
85-1,131. Legislative findings.  
85-1,132. Findings and declarations.  
85-1,133. Football players; compensation.  
85-1,134. Stipends authorized.  
85-1,135. Construction of sections.  
85-1,136. Sections; when operative.  
85-1,137. Alternative to stipend; requirement.  
85-1,138. Act, how cited.  
85-1,139. Purposes of act.  
85-1,140. Autism Treatment Program; created; administration; funding.  
85-1,141. Autism Treatment Program Cash Fund; created; use; investment.  
85-1,142. Department of Health and Human Services; apply for medical assistance program waiver or amendment; legislative intent.

**85-101 University of Nebraska; establishment; name.**

There has been established and shall be maintained in this state an institution under the name and style of the University of Nebraska.

**Source:** Laws 1869, § 1, p. 172; R.S.1913, § 7081; C.S.1922, § 6713; C.S.1929, § 85-101.

University of Nebraska was created as a body corporate, and its general government vested in a Board of Regents. State ex rel. Board of Regents of the University of Nebraska v. Moore, 46 Neb. 373, 64 N.W. 975 (1895).

**85-102 University of Nebraska; object.**

The object of such institution shall be to afford to the inhabitants of this state the means of acquiring a thorough knowledge of the various branches of literature, science and arts.

**Source:** Laws 1869, § 2, p. 172; R.S.1913, § 7082; C.S.1922, § 6714; C.S.1929, § 85-102.

Affording the means of acquiring a thorough knowledge of the various branches of literature, science and the arts is not the limit of the purposes, powers or activities of the University of Nebraska. Fisher v. Board of Regents, 108 Neb. 666, 189 N.W. 161 (1922).

**85-102.01 University of Nebraska; composition.**

The University of Nebraska shall be composed of a chief governing administrative unit, four universities which shall be the University of Nebraska-Lincoln, the University of Nebraska at Omaha, the University of Nebraska at Kearney, and the University of Nebraska Medical Center, and such other institutions and units as may be designated by the Legislature.

**Source:** Laws 1973, LB 149, § 1; Laws 1989, LB 247, § 18.

**85-102.02 Universities; program responsibilities.**

(1) The University of Nebraska-Lincoln shall have responsibility for operating comprehensive programs of undergraduate instruction and primary responsibility, except in the health-related disciplines, for operating comprehensive programs of graduate, postgraduate, and professional instruction, research, and public service as authorized by the Board of Regents of the University of Nebraska consistent with the role and mission assignments provided in Chapter 85, article 9.

(2) The University of Nebraska at Omaha shall have responsibility for operating general programs of undergraduate instruction and programs of graduate instruction, research, and public service as authorized by the Board of Regents consistent with the role and mission assignments provided in Chapter 85, article 9.

(3) The University of Nebraska at Kearney shall have responsibility for operating general programs of undergraduate instruction and programs of graduate instruction, research, and public service as authorized by the Board of Regents consistent with and limited by the role and mission assignments provided in Chapter 85, article 9.

(4) The University of Nebraska Medical Center shall have primary responsibility in the health-related disciplines for operating programs of undergraduate instruction and comprehensive programs of graduate, postgraduate, and professional instruction, research, and public service as authorized by the Board of Regents consistent with the role and mission assignments provided in Chapter 85, article 9.

**Source:** Laws 1989, LB 247, § 19.

**85-103 University of Nebraska; government; Board of Regents; election; vacancies.**

The general government of the University of Nebraska shall be vested in a board of eight regents elected from districts as provided in section 32-510. Vacancies occurring in the board shall be filled as provided in section 32-573.

**Source:** Laws 1869, § 3, p. 172; Laws 1877, § 1, p. 56; R.S.1913, § 7083; C.S.1922, § 6715; C.S.1929, § 85-103; R.S.1943,

§ 85-103 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

§ 85-103; Laws 1947, c. 351, § 2, p. 1102; Laws 1961, c. 457, § 1, p. 1396; Laws 1969, c. 847, § 2, p. 3188; Laws 1971, LB 1035, § 1; Laws 1991, LB 617, § 1; Laws 1994, LB 76, § 611; Laws 2003, LB 181, § 6.

Cross References

Election provisions, see the Election Act, section 32-101.  
Official bonds and oaths, see Chapter 11.

Board of Regents can exercise only such powers as are expressly given to it, or which may be necessary to carry into effect those powers specially given. Regents of the University of Nebraska v. McConnell, 5 Neb. 423 (1877).

**85-103.01 University of Nebraska; Board of Regents; designation of districts.**

For the purpose of section 85-103, the state is divided into eight districts. The limits and designations of the eight districts shall be as follows:

District No. 1. That part of Lancaster County not included in regent district 5;

District No. 2. The counties of Washington and Cass, that part of Saunders County not included in regent district 3, that part of Sarpy County not included in regent district 4 and regent district 8, and that part of Douglas County not included in regent district 4 and regent district 8;

District No. 3. The counties of Cedar, Dixon, Dakota, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Platte, Colfax, Dodge, Polk, and Butler and that part of Saunders County beginning at the intersection of the Saunders-Lancaster County line and U.S. Highway 77, north on U.S. Highway 77 to County Road 18, north on County Road 18 to a north-south line extending north from County Road 18, north along such line to County Road L, east on County Road L to the creek, northwest and north along the creek to County Road M, east on County Road M to County Road 18, north on County Road 18 to County Road X, east on County Road X to County Road 18, north on County Road 18 to Two Mile Road, east on Two Mile Road to County Road 17, north on County Road 17 to County Road Z, east on County Road Z to County Road 17, northwest and north on County Road 17 to Cedar Lakes Road, east on Cedar Lakes Road to the Saunders-Dodge County line, west along the Saunders-Dodge County line to the Saunders-Butler County line, south along the Saunders-Butler County line to the Saunders-Lancaster County line, and east along the Saunders-Lancaster County line to the point of beginning;

District No. 4. That part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 60th Street, northeast on South 60th Street to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to the intersection of an east-west line extending west from Y Street, east along such line to Y Street, east on Y Street to South 52nd Street, north on South 52nd Street to Orchard Avenue, east on Orchard Avenue to South 51st Street, north on South 51st Street to L Street, east on L Street to South 50th Street, north on South 50th Street to Bancroft Street, east on Bancroft Street to South 48th Street, north on South 48th Street to Pacific Street, west on Pacific Street to South 50th Street, north on South 50th Street to North 50th Street, north on North 50th Street to Chicago Street, west on Chicago Street to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Blondo Street, west on Blondo Street to North 61st Street, north on North 61st Street to Miami Street, east on Miami Street to

North 60th Avenue, north on North 60th Avenue to Maple Street, west on Maple Street to North 61st Street, north on North 61st Street to Pratt Street, east on Pratt Street to North 60th Street, north on North 60th Street to Sprague Street, west on Sprague Street to North 63rd Street, north on North 63rd Street to Ames Avenue, east on Ames Avenue to North 62nd Street, north on North 62nd Street to Park Lane Drive, east on Park Lane Drive to North 60th Street, north on North 60th Street to Sorenson Parkway, west on Sorenson Parkway to 66th Street, north on 66th Street to a north-south line extending north from 66th Street, north along such line to the northernmost boundary of Precinct 1-13, follow such boundary west to North 72nd Street, north on North 72nd Street to State Street, east on State Street to North 60th Street, south on North 60th Street to King Street, east on King Street to North 54th Avenue, southeast on North 54th Avenue to Sheffield Street, east on Sheffield Street to Mormon Bridge Road, northeast on Mormon Bridge Road to Young Street, east on Young Street to North 42nd Street, northeast on North 42nd Street to State Street, northeast on State Street to North 36th Street, south on North 36th Street to Sheffield Street, east on Sheffield Street to North 30th Street, south on North 30th Street to Read Street, east on Read Street to North 25th Street, south on North 25th Street to Vane Street, east on Vane Street to North 24th Street, north on North 24th Street to Read Street, east on Read Street and continuing east along an east-west line extending east from Read Street to the Nebraska-Iowa state line, south along the Nebraska-Iowa state line to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning, and that part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 108th Street, south on South 108th Street to Giles Road, west on Giles Road to South 114th Street, south on South 114th Street to Capehart Road, east on Capehart Road to South 72nd Street, north on South 72nd Street to State Highway 370, east on State Highway 370 to the easternmost boundary of Papillion 2-3 Precinct, north along such boundary to Cedardale Road, east on Cedardale Road to 66th Street, north on 66th Street to Cornhusker Road, east on Cornhusker Road to South 36th Street, north on South 36th Street to the southern boundary of Gillmore 1 Precinct, follow such boundary east and north to Childs Road, east on Childs Road to Cedar Island Road, north on Cedar Island Road to Chandler Road West, east on Chandler Road West to Chandler Road East, east on Chandler Road East to Bellevue Boulevard, northwest on Bellevue Boulevard to Gifford Drive, northeast on Gifford Drive to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning;

District No. 5. The counties of York, Seward, Adams, Clay, Fillmore, Saline, Webster, Nuckolls, Thayer, Jefferson, Gage, Otoe, Johnson, Nemaha, Pawnee, and Richardson and that part of Lancaster County beginning at the intersection of the Lancaster-Saline County line and West Stagecoach Road, east on West Stagecoach Road to the western boundary of Centerville Precinct, north along such boundary to West Saltillo Road, east on West Saltillo Road to Southwest 56th Street, north on Southwest 56th Street to West Van Dorn Street, east on West Van Dorn Street to the eastern boundary of Garfield 2 Precinct, follow such boundary north to West Vine Street, east on West Vine Street to Northwest 27th Street, south on Northwest 27th Street to the southern boundary of 1A-1 Precinct, follow such boundary east to Sun Valley Boulevard, northeast on Sun Valley Boulevard to Interstate Highway 180, south on Interstate Highway 180 to Salt Creek, northeast along Salt Creek to the southern boundary of 1D-3

Precinct, follow such boundary east to North 27th Street, north on North 27th Street to the Lancaster-Saunders County line, west along the Lancaster-Saunders County line to the Lancaster-Seward County line, south and west along the Lancaster-Seward County line to the Lancaster-Saline County line, and south along the Lancaster-Saline County line to the point of beginning;

District No. 6. The counties of Hamilton, Merrick, Nance, Boone, Antelope, Pierce, Knox, Boyd, Holt, Wheeler, Greeley, Howard, Hall, Kearney, Franklin, Harlan, Phelps, Buffalo, Sherman, Valley, Garfield, and Custer;

District No. 7. The counties of Furnas, Red Willow, Hitchcock, Dundy, Chase, Hayes, Frontier, Gosper, Dawson, Lincoln, Perkins, Keith, Deuel, Cheyenne, Kimball, Banner, Scotts Bluff, Morrill, Garden, Arthur, McPherson, Logan, Loup, Rock, Keya Paha, Brown, Blaine, Thomas, Hooker, Grant, Cherry, Sheridan, Dawes, Box Butte, and Sioux; and

District No. 8. That part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 108th Street, south on South 108th Street to Giles Road, west on Giles Road to South 114th Street, south on South 114th Street to the southern boundary of Papillion Second 2 Voting District, west along such boundary to the southern boundary of Richland 1 Precinct, west along such boundary to the southern boundary of Richland 8 Precinct, west along such boundary to Interstate Highway 80, southwest on Interstate Highway 80 to Capehart Road, northwest on Capehart Road to South 192nd Street, north on South 192nd Street to Cornhusker Road, west on Cornhusker Road to South 222nd Street, north on South 222nd Street to Centennial Road, west on Centennial Road to South 225th Street, north on South 225th Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning, and that part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 60th Street, northeast on South 60th Street to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to the intersection of an east-west line extending west from Y Street, east along such line to Y Street, east on Y Street to South 52nd Street, north on South 52nd Street to Orchard Avenue, east on Orchard Avenue to South 51st Street, north on South 51st Street to L Street, east on L Street to South 50th Street, north on South 50th Street to Bancroft Street, east on Bancroft Street to South 48th Street, north on South 48th Street to Pacific Street, west on Pacific Street to South 50th Street, north on South 50th Street to North 50th Street, north on North 50th Street to Chicago Street, west on Chicago Street to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Blondo Street, west on Blondo Street to North 61st Street, north on North 61st Street to Miami Street, east on Miami Street to North 60th Avenue, north on North 60th Avenue to Maple Street, west on Maple Street to North 61st Street, north on North 61st Street to Pratt Street, east on Pratt Street to North 60th Street, north on North 60th Street to Sprague Street, west on Sprague Street to North 63rd Street, north on North 63rd Street to Ames Avenue, east on Ames Avenue to North 62nd Street, north on North 62nd Street to Park Lane Drive, east on Park Lane Drive to North 60th Street, north on North 60th Street to Sorenson Parkway, west on Sorenson Parkway to 66th Street, north on 66th Street to a north-south line extending north from 66th Street, north along such line to the northernmost boundary of Precinct 1-13, follow such boundary west to North 72nd Street, north on North 72nd Street to State Street, east on State Street to North

60th Street, south on North 60th Street to King Street, east on King Street to North 54th Avenue, southeast on North 54th Avenue to Sheffield Street, east on Sheffield Street to Mormon Bridge Road, northeast on Mormon Bridge Road to Young Street, east on Young Street to North 42nd Street, northeast on North 42nd Street to State Street, northeast on State Street to North 36th Street, south on North 36th Street to Sheffield Street, east on Sheffield Street to North 30th Street, south on North 30th Street to Read Street, east on Read Street to North 25th Street, south on North 25th Street to Vane Street, east on Vane Street to North 24th Street, north on North 24th Street to Read Street, east on Read Street and continuing east along an east-west line extending east from Read Street to the Nebraska-Iowa state line, northwest along the Nebraska-Iowa state line to Interstate Highway 680, west on Interstate Highway 680 to McKinley Street, northwest on McKinley Street to State Highway 36, west on State Highway 36 to North 108th Street, south on North 108th Street to Blair High Road, southeast on Blair High Road to Interstate Highway 680, south on Interstate Highway 680 to Pacific Street, west on Pacific Street to Skyline Drive, south on Skyline Drive to South 222nd Street, south on South 222nd Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

**Source:** Laws 1969, c. 847, § 3, p. 3189; Laws 1971, LB 1035, § 2; Laws 1981, LB 553, § 1; Laws 1991, LB 617, § 2; Laws 2001, LB 854, § 2.

**Cross References**

**Constitutional provisions,** see Article VII, section 10, Constitution of Nebraska.

**85-103.02 University of Nebraska; Board of Regents; districts; description; basis.**

The descriptions of districts in section 85-103.01 are taken from the 2000 TIGER/Line files published by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1971, LB 1035, § 3; Laws 1981, LB 553, § 2; Laws 1991, LB 617, § 3; Laws 2001, LB 854, § 3.

**85-104 Board of Regents; meetings; open to public; closed sessions; record of meetings; expenses.**

All meetings of the Board of Regents shall be open to the public. The board may hold closed sessions in accordance with the Open Meetings Act. Public record shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1869, § 23, p. 178; Laws 1877, § 1, p. 58; Laws 1907, c. 148, § 1, p. 462; R.S.1913, § 7111; C.S.1922, § 6743; C.S.1929, § 85-129; R.S.1943, § 85-104; Laws 1975, LB 325, § 8; Laws 1981, LB 204, § 217; Laws 1996, LB 900, § 1077; Laws 2004, LB 821, § 42.

**Cross References**

**Open Meetings Act,** see section 84-1407.

**85-105 Board of Regents; organization; property; powers.**

The Board of Regents shall have full power to appoint its own presiding officer and secretary. It shall constitute a body corporate, to be known as the Board of Regents of the University of Nebraska, and as such may sue and be sued and may make and use a common seal and alter the same at pleasure. It may acquire real and personal property for the use of the university and may dispose of the same whenever the university can be benefited thereby, except that it shall never dispose of grounds upon which a building of the university having a market value in excess of one million dollars is located without the consent of the Legislature.

**Source:** Laws 1869, § 5, p. 173; Laws 1877, § 1, p. 56; R.S.1913, § 7085; C.S.1922, § 6717; C.S.1929, § 85-105; R.S.1943, § 85-105; Laws 1987, LB 656, § 1; Laws 2003, LB 68, § 1.

The University of Nebraska is a body corporate that may sue and be sued. *Stadler v. Curtis Gas, Inc.*, 182 Neb. 6, 151 N.W.2d 915 (1967).

Legislature could require Board of Regents to establish experimental stations. *State ex rel. Bushee v. Whitmore*, 86 Neb. 399, 125 N.W. 606 (1910), modifying 85 Neb. 566, 123 N.W. 1051 (1909).

Board of Regents has no power to disburse endowment fund without appropriation. *State ex rel. Bessey v. Babcock*, 17 Neb. 610, 24 N.W. 202 (1885).

Article VII, section 10, Constitution of Nebraska, and this section do not grant power to waive immunity from suit in federal court. *Board of Regents of University of Nebraska v. Dawes*, 370 F.Supp. 1190 (D. Neb. 1974).

**85-106 Board of Regents; general powers; duties; retirement benefits; requirements.**

The Board of Regents shall have the power:

- (1) To enact laws for the government of the university;
- (2) To elect a president, vice presidents, chancellors, vice chancellors, deans, associate deans, assistant deans, directors, associate directors, assistant directors, professors, associate professors, assistant professors, instructors, other members of the faculty staff, and employees generally of the university and to provide for academic tenure for professors, associate professors, and assistant professors;
- (3) To prescribe the duties of such persons not inconsistent with section 85-1,105;
- (4) To fix their compensation;
- (5) To provide, in its discretion, retirement benefits for present and future employees of the university, subject to the following:
  - (a) The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary contributions for both past service and future service being treated in the university budget in the same way as any other operating expense;
  - (b) The university contribution under any such retirement plan shall be (i) the rate established by the Board of Regents and not more than eight percent of each university employee's full-time salary or wage earnings for any calendar year before any agreement for reduction of salary or wage earnings and (ii) pursuant to an agreement for reduction of salary or wage earnings, the amount of the reduction of salary or wage earnings;
  - (c) Each employee's contribution shall be the rate established by the Board of Regents and shall not be required to exceed the university's contribution under subdivision (5)(b)(i) of this section, except that in lieu of making such contribution, each such employee may enter into an agreement for reduction of salary

or wages for the purchase by the Board of Regents of annuity contracts for such employee, under the provisions of the Internal Revenue Code, but the amount of the reduction of salary or wages allowable under this subdivision may not include credit for service prior to March 29, 1972;

(d) The retirement benefits of any employee for service prior to September 1, 1961, shall be those provided under the retirement plan then in force, which benefits shall not be abridged, except that such retirement benefits shall become fully vested in the event of an employee's termination of employment if such employee has at least ten years of service at the date of termination;

(e) Continued contributions to the system until the date of retirement as provided in section 85-606; and

(f) The investment of retirement funds shall be pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, but no change in the type of investment of such funds shall be made without the prior approval of the Board of Regents;

(6) To equalize and provide for uniform benefits for all present and future employees, including group life insurance, group hospital-medical insurance, group long-term disability income insurance, and retirement benefits;

(7) To provide, through the University Extension Division, for the holding of classes at various localities throughout the state avoiding unnecessary duplication of courses offered by other educational institutions in such localities and consistent with the orders of the Coordinating Commission for Postsecondary Education issued pursuant to sections 85-1413 and 85-1414;

(8) To remove the president, vice presidents, chancellors, vice chancellors, deans, associate deans, assistant deans, directors, associate directors, assistant directors, professors, associate professors, assistant professors, instructors, other members of the faculty staff, and employees generally, when the interests of the university require it; and

(9) To pay expenses for recruitment of academic, administrative, professional, and managerial personnel.

The Board of Regents shall institute a continuing program of preventive maintenance and a program of deferred maintenance consistent with the provisions of the Deferred Building Renewal Act and shall consult with the Nebraska Arts Council and acquire works of art for the original construction of any public building under its supervision consistent with sections 82-317 to 82-329 and 85-106.01 to 85-106.03.

**Source:** Laws 1869, § 6, p. 173; Laws 1875, § 2, p. 154; R.S.1913, § 7086; C.S.1922, § 6718; C.S.1929, § 85-106; R.S.1943, § 85-106; Laws 1949, c. 311, § 1, p. 1028; Laws 1959, c. 458, § 1, p. 1524; Laws 1959, c. 459, § 1, p. 1526; Laws 1967, c. 621, § 1, p. 2083; Laws 1969, c. 848, § 1, p. 3190; Laws 1969, c. 849, § 1, p. 3191; Laws 1969, c. 584, § 120, p. 2423; Laws 1972, LB 1176, § 1; Laws 1973, LB 248, § 2; Laws 1973, LB 149, § 2; Laws 1973, LB 423, § 1; Laws 1977, LB 309, § 20; Laws 1978, LB 664, § 9; Laws 1980, LB 817, § 1; Laws 1981, LB 463, § 2; Laws 1991, LB 663, § 59; Laws 1994, LB 1066, § 134; Laws 1995, LB 574, § 89.

**Cross References**

**Deferred Building Renewal Act**, see section 81-190.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

State Capitol, improvement district, powers of board, see section 81-1108.31.

**85-106.01 University of Nebraska; new capital construction; appropriation; percentage used for works of art; when.**

After January 1, 1979, at least one percent of any appropriation for the original construction of any public building under the supervision of the Board of Regents of the University of Nebraska shall be spent for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the Board of Regents of the University of Nebraska in other public facilities.

**Source:** Laws 1978, LB 664, § 10.

**85-106.02 Board of Regents; works of art; duties.**

The Board of Regents of the University of Nebraska, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchases of art for each project under its supervision. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Regents in consultation with the Nebraska Arts Council.

**Source:** Laws 1978, LB 664, § 11.

**85-106.03 Board of Regents; insure compliance with sections; manner.**

The Board of Regents shall inform the Director of Administrative Services that sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 have been complied with for projects under its supervision before a warrant may be issued for payment.

**Source:** Laws 1978, LB 664, § 12.

**85-106.04 Retirement benefits; certain employees; cost-of-living adjustment; how computed.**

Commencing on July 22, 1978, to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement of certain persons of the University of Nebraska who have earned retirement benefits while in the employ of the University of Nebraska prior to September 1, 1961, and who have retired prior to July 22, 1978:

(1) The total accumulation of retirement benefits earned under the retirement plan in force prior to September 1, 1961, shall be adjusted by the percentage of increase in the employer's wage levels which shall mean the average of salaries paid for the nine-month academic year to employees from the year of each person's retirement to the fiscal year ending June 30, 1977, which total, as adjusted, shall then be the total accumulation of retirement benefits prior to September 1, 1961; and

(2) The two thousand four hundred dollar maximum benefits provision under the university retirement plan in effect prior to September 1, 1961, shall be removed.

**Source:** Laws 1978, LB 198, § 1.

**85-106.05 Board of Regents; insurance program for student athletes; duties.**

The Board of Regents of the University of Nebraska shall establish an insurance program which provides coverage to student athletes for personal injuries or accidental death while participating in university-organized play or practice in an intercollegiate athletic event. Such insurance program shall include, but not be limited to, the following coverages:

(1) All reasonable and necessary hospital, medical, and surgical services for a period of six years after the date of injury up to a maximum amount of one million dollars;

(2) For any total disability lasting longer than one year from the date of injury and which prevents further participation by the student in intercollegiate athletics, a minimum annuity of two thousand dollars per month to be paid to the disabled person beginning one year after the date of injury and continuing thereafter during the period of total disability, but not beyond six years from the date of injury;

(3) For any permanent and total disability, a minimum annuity of three thousand dollars per month to be paid to the disabled person beginning six years after the date of injury and continuing thereafter during the period of total disability;

(4) For any permanent partial disability when there is at least a seventy percent loss of use of a limb and when the student is unable to further participate in intercollegiate athletics, the plan shall provide for payment of a lump-sum benefit in the minimum amount of ten thousand dollars one year after the date of injury; and

(5) For accidental death or dismemberment while participating in university-organized play or practice in an intercollegiate athletic event, the plan shall provide for payment of a lump-sum benefit in the minimum amount of one hundred thousand dollars.

Such insurance program may include self-insurance by the University of Nebraska of any risk or deductible amount specified by the Board of Regents and, with respect to hospital, medical, and surgical services, may be coordinated with any other valid and collectible insurance providing coverage for a student athlete outside of the university's insurance program so that accident and health coverage is provided by the University of Nebraska without duplication of any such outside insurance coverage.

**Source:** Laws 1984, LB 764, § 2; Laws 1994, LB 381, § 1.

**85-106.06 Board of Regents; chief executive officer; chief administrative officers; appointment.**

(1) The chief executive officer of the University of Nebraska shall be appointed by the Board of Regents, hold office at the pleasure of the board, and receive such compensation as the board may prescribe.

(2) The University of Nebraska-Lincoln, the University of Nebraska at Omaha, the University of Nebraska at Kearney, the University of Nebraska Medical Center, and any other postsecondary educational institution designated by the Legislature to be a part of the University of Nebraska shall be governed by the Board of Regents, and each shall be managed and administered in the manner prescribed by the board. The chief administrative officer of each such postsec-

§ 85-106.06 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

ondary educational institution shall be appointed, hold office, and be compensated as prescribed by the Board of Regents.

**Source:** Laws 2003, LB 68, § 2.

**85-107 University of Nebraska; colleges and institute; enumerated; section, how construed.**

(1) The University of Nebraska may embrace the colleges and institute listed in this section and any other colleges and institutes as may be established by the Board of Regents of the University of Nebraska with the approval of the Coordinating Commission for Postsecondary Education.

(2) The colleges and institute of the University of Nebraska-Lincoln shall be as follows:

- (a) Architecture;
- (b) Arts and Sciences;
- (c) Business Administration;
- (d) Engineering and Technology;
- (e) Home Economics;
- (f) Journalism;
- (g) Law;
- (h) Teachers; and

(i) University of Nebraska Institute of Agriculture and Natural Resources which shall embrace divisions and administrative units as provided in section 85-1,104.

(3) The colleges of the University of Nebraska at Omaha shall be as follows:

- (a) Arts and Sciences;
- (b) Business Administration;
- (c) Continuing Studies;
- (d) Education;
- (e) Fine Arts; and
- (f) Public Affairs and Community Service.

(4) The colleges of the University of Nebraska at Kearney shall be as follows:

- (a) Business and Technology;
- (b) Education;
- (c) Fine Arts and Humanities; and
- (d) Natural and Social Sciences.

(5) The colleges of the University of Nebraska Medical Center shall be as follows:

- (a) Dentistry;
- (b) Medicine;
- (c) Nursing; and
- (d) Pharmacy.

(6) In addition to the colleges and institute listed in this section, there shall be a graduate college which shall exist and be administered as a university-wide college.

(7) Nothing contained in this section shall be construed to limit the authority of the Board of Regents of the University of Nebraska to (a) merge existing colleges established on a campus level into systemwide administrative units, (b) merge or eliminate existing colleges established on a campus level, or (c) merge or eliminate divisions and administrative units of the University of Nebraska Institute of Agriculture and Natural Resources.

**Source:** Laws 1869, § 7, p. 173; Laws 1877, § 1, p. 56; Laws 1909, c. 141, § 1, p. 499; R.S.1913, § 7084; Laws 1915, c. 127, § 1, p. 287; Laws 1919, c. 164, § 1, p. 368; C.S.1922, § 6716; C.S. 1929, § 85-104; R.S.1943, § 85-107; Laws 1953, c. 360, § 1, p. 1140; Laws 1955, c. 350, § 2, p. 1071; Laws 1963, c. 540, § 1, p. 1686; Laws 1969, c. 850, § 1, p. 3197; Laws 1972, LB 1237, § 1; Laws 1973, LB 275, § 1; Laws 1976, LB 995, § 1; Laws 1985, LB 28, § 1; Laws 1985, LB 204, § 3; Laws 1991, LB 663, § 60.

Board of Regents is charged with management of operation of University Hospital. Board of Regents v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221 (1951).

Experiment stations may be maintained in connection with the College of Agriculture. State ex rel. Bushee v. Whitmore, 85 Neb. 566, 123 N.W. 1051 (1909).

#### **85-107.01 Repealed. Laws 1991, LB 663, § 137.**

#### **85-108 Colleges; government; program of instruction; approval.**

The immediate government of each college shall be by its own faculty, which shall consist of the professors therein, but no program of instruction shall be adopted without approval of the program in the manner prescribed by the Board of Regents.

**Source:** Laws 1869, § 13, p. 176; R.S.1913, § 7091; C.S.1922, § 6723; C.S.1929, § 85-110; R.S.1943, § 85-108; Laws 2003, LB 68, § 3.

#### **85-109 Chairs of instruction; faculty; duties in more than one college.**

The Board of Regents shall be empowered to establish in these several colleges such chairs of instruction as may be proper, and so many of them as the funds of the university may allow. It is also authorized to require professors to perform duties in more than one of the several colleges whenever the board shall deem it wise and proper so to do.

**Source:** Laws 1869, § 9, p. 175; Laws 1877, § 1, p. 57; R.S.1913, § 7087; C.S.1922, § 6719; C.S.1929, § 85-107.

#### **85-110 Repealed. Laws 2003, LB 68, § 11.**

#### **85-111 Faculty; rules and regulations; problems of state interest.**

The Board of Regents shall make, from time to time, such rules and regulations as it deems wise governing the duties of members of the several faculties of the university in respect to scientific, economic or other problems of general or special interest to the people of the state. All money which may be appropriated by the Legislature for any purpose involving the cooperation of the university staffs of instruction or experimentation shall be administered and expended under the direction and control of the board in the manner now provided by law for expenditure of university funds generally.

**Source:** Laws 1911, c. 137, § 1, p. 448; R.S.1913, § 7123; C.S.1922, § 6755; C.S.1929, § 85-141; R.S.1943, § 85-111; Laws 1945, c. 3, § 2, p. 68.

**85-111.01 Repealed. Laws 1979, LB 194, § 3.**

**85-112 University of Nebraska; admission requirements; powers of Board of Regents.**

Students seeking admission to any postsecondary educational institution governed by the Board of Regents or to any college or school of any such institution shall, precedent to admission, complete such requirements as may be prescribed or authorized by the Board of Regents.

**Source:** Laws 1869, § 15, p. 176; G.S.1873, c. 78, § 15, p. 1053; R.S. 1913, § 7093; C.S.1922, § 6725; C.S.1929, § 85-112; Laws 1939, c. 137, § 1, p. 585; C.S.Supp.,1941, § 85-112; R.S.1943, § 85-112; Laws 2003, LB 68, § 4.

**85-112.01 Repealed. Laws 2003, LB 68, § 11.**

**85-112.02 Repealed. Laws 2003, LB 68, § 11.**

**85-113 Repealed. Laws 2003, LB 68, § 11.**

**85-114 Agricultural, engineering, and scientific courses; attendance.**

The Board of Regents shall provide a rule for attendance upon the agricultural college and civil engineering and scientific courses by persons whose employments are such as to allow of their pursuit of study only a portion of the year.

**Source:** Laws 1869, § 19, p. 177; R.S.1913, § 7098; C.S.1922, § 6730; C.S.1929, § 85-116.

**85-115 Textbooks; sale; price.**

The Board of Regents shall procure and have available for sale all textbooks to be used by students in the university, and shall sell them to students at a fair price, not exceeding the list price thereof.

**Source:** Laws 1869, § 17, p. 177; R.S.1913, § 7096; C.S.1922, § 6728; C.S.1929, § 85-114; R.S.1943, § 85-115; Laws 1947, c. 352, § 1, p. 1103.

**85-116 Students; equal privileges.**

No person shall be deprived of the privileges of this institution because of age, sex, color or nationality.

**Source:** Laws 1869, § 18, p. 177; R.S.1913, § 7097; C.S.1922, § 6729; C.S.1929, § 85-115.

This section does not create a property interest sufficient to support an action alleging reverse sex discrimination in an intercollegiate sport. *Fluitt v. University of Nebraska*, 489 F.Supp. 1194 (D. Neb. 1980).

**85-117 Degrees, diplomas; powers of Board of Regents.**

The Board of Regents shall have exclusive authority to confer degrees and grant diplomas, but each college may, in its discretion, grant rewards of merit to its own students. No student upon graduation shall receive any diploma or degree unless he shall have been recommended for such honor by the faculty of the college in which he shall have pursued his studies. The board shall also have power to confer the usual honorary degrees upon other persons in

recognition of their learning or devotion to literature, science, or art; but no degree shall be conferred in consideration of the payment of money or other valuable thing.

**Source:** Laws 1869, § 14, p. 176; R.S.1913, § 7092; C.S.1922, § 6724; C.S.1929, § 85-111; R.S.1943, § 85-117; Laws 1953, c. 361, § 1, p. 1141.

**85-118 Buildings; plans; approval.**

No superstructural work upon any building for the university shall be commenced until the designs and plans therefor shall have been approved in the manner prescribed by the Board of Regents.

**Source:** Laws 1869, § 24, p. 179; R.S.1913, § 7112; C.S.1922, § 6744; C.S.1929, § 85-130; R.S.1943, § 85-118; Laws 2003, LB 68, § 5.

**85-119 Repealed. Laws 1981, LB 545, § 52.**

**85-120 University of Nebraska Institute of Agriculture and Natural Resources; model farm; alienation prohibited.**

State land set aside by the Governor for a model farm as a part of the University of Nebraska Institute of Agriculture and Natural Resources shall not be disposed of for any other purpose.

**Source:** Laws 1869, § 10, p. 175; R.S.1913, § 7088; C.S.1922, § 6720; C.S.1929, § 85-108; R.S.1943, § 85-120; Laws 1991, LB 663, § 61.

**85-121 Nebraska College of Technical Agriculture at Curtis; creation; location; purpose.**

For the furtherance and promotion of agriculture and stockraising interests of this state, a technical college of agriculture is hereby established near the town of Curtis in Frontier County, Nebraska. Such college shall be maintained under the conditions prescribed in this section and sections 85-121.03 and 85-121.04 and shall be known as the Nebraska College of Technical Agriculture at Curtis. Such college of agriculture shall be under the control and management of the Board of Regents of the University of Nebraska.

The Nebraska College of Technical Agriculture at Curtis shall be devoted to a statewide mission of instruction relating to food and agriculture at less than the baccalaureate degree, with concentration on the applied associate degree. The program shall be organized to provide expedient response to the changes needed in technical education to serve the agricultural industry of the state.

**Source:** Laws 1911, c. 138, § 1, p. 449; R.S.1913, § 7130; C.S.1922, § 6762; C.S.1929, § 85-148; R.S.1943, § 85-121; Laws 1987, LB 656, § 2; Laws 1988, LB 1042, § 1; Laws 1991, LB 663, § 62; Laws 2003, LB 7, § 1.

**85-121.01 Repealed. Laws 1988, LB 1042, § 5.**

**85-121.02 Repealed. Laws 1988, LB 1042, § 5.**

**85-121.03 Appropriation required.**

§ 85-121.03 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

The Legislature shall appropriate from the General Fund the money necessary to carry out the duties and programs of the Nebraska College of Technical Agriculture at Curtis. The appropriation shall be made to the Board of Regents of the University of Nebraska for the sole purpose of maintaining the duties, programs, and facilities of such college.

**Source:** Laws 1988, LB 1042, § 2; Laws 1991, LB 663, § 63; Laws 1993, LB 239, § 6; Laws 2003, LB 7, § 2.

**85-121.04 Program review; required.**

The Nebraska College of Technical Agriculture at Curtis or any educational program of such college shall be subject to program review pursuant to the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1988, LB 1042, § 3; Laws 1991, LB 663, § 64.

**Cross References**

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

**85-121.05 Repealed. Laws 2003, LB 7, § 9.**

**85-122 University funds; designation; investment; disbursements; travel expenses.**

The several funds for the support of the university shall be constituted and designated as follows: (1) The Permanent Endowment Fund; (2) the Temporary University Fund; (3) the University Cash Fund; (4) the United States Morrill Fund; (5) the United States Experiment Station Fund; (6) the University Trust Fund; (7) the United States Agricultural Extension Fund; (8) the Veterinary School Fund; (9) the University of Nebraska at Omaha Cash Fund; (10) the University of Nebraska at Omaha Trust Fund; (11) the University of Nebraska at Kearney Cash Fund; (12) the University of Nebraska at Kearney Trust Fund; (13) the Agricultural Field Laboratory Fund; (14) the Animal Research and Diagnosis Revolving Fund; (15) the University Buildings Renovation and Land Acquisition Fund; (16) the University Facility Improvement Fund; (17) the University of Nebraska Eppley Science Hall Construction Fund; and (18) the University Facilities Fund. No portion of the funds designated above derived from taxation shall be disbursed for mileage or other traveling expenses except as authorized by sections 81-1174 to 81-1177. No expenditures shall be made for or on behalf of the School of Veterinary Medicine and Surgery except from money appropriated to the Veterinary School Fund. Any money in the funds designated in this section 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.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7100; C.S.1922, § 6732; C.S.1929, § 85-118; Laws 1933, c. 96, § 23, p. 400; Laws 1941, c. 180, § 11, p. 707; C.S.Supp.,1941, § 85-118; R.S.1943, § 85-122; Laws 1945, c. 257, § 1, p. 797; Laws 1949, c. 312, § 1, p. 1030; Laws 1951, c. 344, § 1, p. 1131; Laws 1955, c. 350, § 5, p. 1072; Laws 1969, c. 584, § 122, p. 2425; Laws 1983, LB 410, § 2; Laws 1986, LB 842, § 2; Laws 1987, LB 218, § 2; Laws 1988, LB 864, § 67; Laws 1989, LB 247, § 20; Laws 1990, LB 1220, § 2; Laws 1992, Third Spec. Sess., LB 9, § 2; Laws 1994, LB 1066, § 135.

## Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

Income from government grants may be disbursed by Board of Regents without specific biennial appropriations. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

After custody of funds was given to State Treasurer, specific appropriation of funds became necessary to authorize disburse-

ment by Board of Regents. State ex rel. Bessey v. Babcock, 17 Neb. 610, 24 N.W. 202 (1885).

**85-122.01 United States Agricultural Extension Fund; source; disbursement.**

The United States Agricultural Extension Fund shall consist of all money which may come into the possession of the State Treasurer for use or expenditure by the University of Nebraska by reason of any laws, now existing or subsequently enacted by the United States, whereby money is appropriated to or provided for agricultural extension purposes. The agricultural extension fund when appropriated by the Legislature shall be applied exclusively to the uses and objects designated by any laws now existing or subsequently enacted by the United States relative thereto. It shall at all times be subject to the orders of the Board of Regents for expenditure for said uses only.

**Source:** Laws 1949, c. 309, § 1, p. 1026.

**85-123 Permanent Endowment Fund; source; accounts; investment.**

The Permanent Endowment Fund shall be kept in two accounts: In the first account, all money derived as principal from the sale of lands donated to the state by the United States to establish and endow a state university under the Act of Congress of April 19, 1864; and in the second account, all money derived as principal from the sale of lands donated to the state by the United States, to provide colleges for the benefit of agriculture and the mechanic arts, by an Act of Congress approved July 2, 1862. All such money derived from federal grants shall be invested in the manner provided by law for the investment of the permanent school fund of the state, in the same kind of securities, and by the same officers charged with that duty, in accordance with the provisions of section 72-202 as may from time to time be amended by the Legislature. All money acquired by the Board of Regents of the University of Nebraska by donation or bequest to it, including money derived as principal from the sale of lands or other property so acquired or so derived, shall belong to the University Trust Fund and be administered in accordance with the provisions of section 85-123.01. The Permanent Endowment Fund shall never be appropriated by the Legislature nor be expended for any purpose whatsoever.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7101; C.S.1922, § 6733; C.S.1929, § 85-119; R.S.1943, § 85-123; Laws 1945, c. 257, § 2, p. 798; Laws 1983, LB 238, § 2.

**85-123.01 University Trust Fund, defined; investment; deposited with State Treasurer.**

(1) The University Trust Fund shall consist of all property, real or personal, acquired by the Board of Regents of the University of Nebraska by donation or bequest to it, including money derived as principal from the sale of land or other property so acquired or derived.

§ 85-123.01 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(2) The University Trust Fund shall be held and managed in such manner as the Board of Regents of the University of Nebraska shall determine. Where such funds are to be invested, they shall be invested by the state investment officer for the Board of Regents in such investments as are authorized by section 72-1246, subject to the following exceptions: (a) No such investment need be made if, according to the terms of the donation or bequest, the Board of Regents is not limited to the expenditure of only the interest or income of the fund; and (b) no such investment need be made if the will, deed or instrument, making such donation or bequest, makes other provisions or directions as to investments and in such cases the state investment officer for the Board of Regents shall comply with the provisions of said will, deed or instrument.

**Source:** Laws 1945, c. 257, § 3, p. 798; Laws 1959, c. 263, § 22, p. 950; Laws 1967, c. 622, § 1, p. 2085; Laws 1969, c. 584, § 123, p. 2425.

**85-124 Temporary University Fund; source; use.**

The Temporary University Fund shall consist of (1) the proceeds of investments of the permanent fund; (2) the rental of the university and agricultural college lands leased, and the interest upon deferred payments on sales of the lands aforesaid; (3) the rentals or income of lands or other property donated without particular objects or uses being specified; and (4) such sums as may be from time to time appropriated to the use of the university. All money accruing to this fund is hereby appropriated for the maintenance of the university, including buildings and permanent improvements, and the same may be applied by the Board of Regents to any and all university needs except the income from donations made for particular purposes, which income shall be used and applied as hereinbefore specified only.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7102; Laws 1921, c. 24, § 4, p. 151; C.S.1922, § 6734; C.S.1929, § 85-120.

One mill tax levy under former act was not repealed by revenue act of 1903. State ex rel. Ledwith v. Searle, 79 Neb. 111, 112 N.W. 380 (1907).

**85-125 University Cash Fund; source; use.**

The University Cash Fund shall consist of the matriculation and diploma fees, registration fees, laboratory fees, tuition fees, summer session or school fees, all other money or fees collected from students by the authority of the Board of Regents for university purposes, and receipts from all university activities collected by the board in connection with the operation of the university. A record shall be kept by the board separating such money into appropriate and convenient accounts. All money accruing to the University Cash Fund shall become available when appropriated by the Legislature for the use of the university and its activities and shall at all times be subject to the orders of the Board of Regents accordingly. No warrant shall be issued against such fund unless there is money in the hands of the State Treasurer sufficient to pay the same. The board shall cause all money belonging to this fund, which is received by its authority at the university, to be paid over from time to time, as the same is received, to the State Treasurer, to be placed to the credit of this fund, except that the board may retain in its possession a sum, not to exceed four hundred seventy-five thousand dollars, out of which money at least fifty thousand dollars

shall be available during the first two weeks of each term to make advances to students who have financial aid in excess of tuition and fees, and the remainder of which money shall be available to make settlement and equitable adjustments with students entitled thereto, to carry on university activities contributing to this fund, and to provide for contingencies. The board may require its secretary, in addition to his or her other duties, to perform all acts necessary to carry into effect the provisions of this section.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7103; C.S.1922, § 6735; C.S.1929, § 85-121; R.S.1943, § 85-125; Laws 1949, c. 313, § 1, p. 1031; Laws 1967, c. 623, § 1, p. 2087; Laws 1979, LB 248, § 1; Laws 1985, LB 151, § 1.

Funds herein, not derived from taxation, are considered "appropriated" by section 85-131, and are under direct control of Board of Regents. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

Mandatory fees for support of a student newspaper and other activities are public funds for which reasonable supervision by

university authorities is required, and their use will not be enjoined except in a clear case. Larson v. Board of Regents, 189 Neb. 688, 204 N.W.2d 568 (1973).

#### **85-126 United States Morrill Fund; source; use.**

The United States Morrill Fund shall consist of all money appropriated by the United States to this state for its university to aid instruction, and to furnish the facilities for instruction, in certain branches in accordance with the provisions of an Act of Congress approved August 30, 1890, entitled An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an Act of Congress approved July 2, 1862, and acts supplemental thereto. The said fund shall be applied exclusively to the uses and purposes prescribed by the Act or Acts of Congress relating thereto, and the fund is hereby appropriated accordingly, and shall at all times be subject to the orders of the Board of Regents for the purpose specified by Act of Congress only.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7104; C.S.1922, § 6736; C.S.1929, § 85-122.

#### **85-127 United States Experiment Station Fund; source; use.**

The United States Experiment Station Fund shall consist of (1) all money which may come into the possession of the State Treasurer on and after July 1, 1899, accruing under an Act of Congress approved March 2, 1887, entitled An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the acts supplemental thereto, and (2) all money which may hereafter be received by virtue of any Act of Congress supplemental to the agricultural experiment station act and for the same purposes. The fund is hereby appropriated to be applied exclusively to the uses and objects designated by the Act or Acts of Congress relating thereto and shall at all times be subject to the orders of the Board of Regents for expenditure for such uses only.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7105; C.S.1922, § 6737; C.S.1929, § 85-123; R.S.1943, § 85-127; Laws 1987, LB 25, § 1.

§ 85-127 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Board of Regents may disburse fund without special appropriation. State ex rel. Spencer Lens Co. v. Searle, 77 Neb. 155, 109 N.W. 770 (1906).

**85-128 University funds; State Treasurer; custodian; disbursement.**

The State Treasurer shall be the custodian of all the funds of the university. Disbursements from the funds named in sections 85-124 to 85-127 shall be made in accordance with the provisions of law relating to the disbursement of university funds in the hands of the State Treasurer as provided by law.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7106; C.S.1922, § 6738; C.S.1929, § 85-124.

**85-129 University funds; State Treasurer; duties.**

The State Treasurer shall be the treasurer of the state university and the custodian of all funds donated to the university or to the Agricultural Research Division by the United States, including the Morrill, Hatch, and Adams funds, all other donations, gifts, and bequests, income from land and productive funds, fees paid by students, and all funds for the use of the university derived from any source, except (1) funds created by taxation and paid into the state treasury as taxes and (2) the University Trust Fund which shall be held and managed in the manner provided by section 85-123.01.

**Source:** Laws 1907, c. 147, § 1, p. 461; R.S.1913, § 7109; C.S.1922, § 6741; C.S.1929, § 85-127; R.S.1943, § 85-129; Laws 1967, c. 622, § 2, p. 2086; Laws 1991, LB 663, § 66.

**85-130 University funds; Board of Regents; disbursements.**

The university funds, other than those created by taxation, shall be held subject to the order of the Board of Regents and shall be disbursed for the purposes prescribed by law, upon presentation of warrants to the Director of Administrative Services, to be issued on certificates of the Board of Regents executed as required by law, except that no portion of such funds, not created by taxation, shall be disbursed for mileage or other traveling expenses except as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1907, c. 147, § 2, p. 461; R.S.1913, § 7107; C.S.1922, § 6739; C.S.1929, § 85-125; Laws 1933, c. 96, § 24, p. 401; Laws 1941, c. 180, § 12, p. 708; C.S.Supp.,1941, § 85-125; R.S.1943, § 85-130; Laws 1983, LB 410, § 3; Laws 1988, LB 864, § 68.

**85-131 University funds; disbursements; how made.**

Disbursements from the university funds shall be made by the State Treasurer upon warrants drawn by the Director of Administrative Services who shall issue warrants upon certificates issued as authorized by the Board of Regents.

**Source:** Laws 1875, § 4, p. 155; R.S.1913, § 7108; C.S.1922, § 6740; C.S.1929, § 85-126; R.S.1943, § 85-131; Laws 1979, LB 194, § 2; Laws 2003, LB 68, § 6.

Funds herein can be expended only by the Board of Regents. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

By this section, it is unnecessary to authorize disbursement of income from trust funds by Board of Regents. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

**85-132 Gifts and bequests; acceptance.**

The Board of Regents may accept gifts and bequests of property subject to a reservation of the income for a stated period or for the life of the donor or the life or lives of other persons designated.

**Source:** Laws 1911, c. 136, § 1, p. 448; R.S.1913, § 7110; C.S.1922, § 6742; Laws 1923, c. 66, § 1, p. 198; Laws 1927, c. 79, § 1, p. 244; C.S.1929, § 85-128; R.S.1943, § 85-132; Laws 2003, LB 68, § 7.

**85-133 Board of Regents; eminent domain; procedure.**

The Board of Regents of the University of Nebraska is hereby given power and authority to acquire by eminent domain lands necessary for the university. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1905, c. 158, § 1, p. 606; R.S.1913, § 7117; C.S.1922, § 6749; C.S.1929, § 85-135; R.S.1943, § 85-133; Laws 1951, c. 101, § 122, p. 504.

**85-134 University of Nebraska Medical Center Medical Education Revolving Fund; established; use; investment.**

The University of Nebraska Medical Center Medical Education Revolving Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to fund medical education. Any money in the 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.

**Source:** Laws 2004, LB 1005, § 137; Laws 2007, LB296, § 811.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-135 Repealed. Laws 1951, c. 101, § 127.**

**85-136 Repealed. Laws 1951, c. 101, § 127.**

**85-137 Repealed. Laws 1951, c. 101, § 127.**

**85-138 Repealed. Laws 1951, c. 101, § 127.**

**85-139 Repealed. Laws 2003, LB 68, § 11.**

**85-140 Repealed. Laws 1953, c. 362, § 2.**

**85-141 Repealed. Laws 1953, c. 362, § 2.**

**85-142 Repealed. Laws 1953, c. 362, § 2.**

**85-143 Repealed. Laws 1953, c. 362, § 2.**

**85-144 Repealed. Laws 1953, c. 362, § 2.**

**85-145 Agricultural experiment stations; acceptance of provisions of federal act.**

§ 85-145            **UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

Full and complete acceptance, ratification and assent is hereby made and given by the State of Nebraska to all of the provisions, terms, grants and conditions and purposes of the grants made and prescribed by the Act of Congress of the United States, entitled An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto.

**Source:** Laws 1887, c. 88, § 1, p. 637; R.S.1913, § 7131; C.S.1922, § 6763; C.S.1929, § 85-149.

**85-146 Agricultural experiment stations; federal aid; acceptance.**

Full and complete assent is given by the State of Nebraska to the provisions of an act of the Sixty-eighth Congress of the United States, Second Session, House Roll No. 157, Calendar No. 1226, approved February 24, 1925, and entitled "An act to authorize the more complete endowment of the agricultural experiment stations, and for other purposes." The University of Nebraska is designated to receive the benefits of said act and to conduct the work and experiments in accordance with said act. The Board of Regents of the university is empowered to receive the grants under the provisions of said act, and is directed to conduct the work and experiments, and make the reports as required by the provisions of said act.

**Source:** Laws 1925, c. 11, § 1, p. 80; C.S.1929, § 85-155.

**85-147 Agriculture and mechanic arts; acceptance of federal act.**

Full and complete acceptance, ratification and assent is made and given by the State of Nebraska to all and every of the grants, purposes, terms and conditions set forth in an Act of the Congress of the United States, approved August 30, 1890, entitled An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress, approved July 2, 1862.

**Source:** Laws 1891, c. 52, § 1, p. 358; R.S.1913, § 7132; C.S.1922, § 6764; C.S.1929, § 85-150.

**85-148 Agriculture and mechanic arts; appropriation and use of money received.**

All money received by the State Treasurer, or other state officer, in pursuance and by virtue of the said Act of Congress, is specifically appropriated and set apart solely for the more complete endowment, support and maintenance of the college for the benefit of agriculture and the mechanic arts existing in this state under the provisions of an Act of Congress approved July 2, 1862, and designated by law as the Industrial College of the University of Nebraska. All of the money shall be immediately paid over by the treasurer to the authorities of the college designated in section 85-149, without further warrant or authority than is contained herein.

**Source:** Laws 1891, c. 52, § 2, p. 358; R.S.1913, § 7133; C.S.1922, § 6765; C.S.1929, § 85-151.

**85-149 Agriculture and mechanic arts; Board of Regents; powers and duties.**

For all intents and purposes of sections 85-145, 85-147 and 85-148, and of the said Act of Congress, and to carry the latter into full effect in this state, the Board of Regents of the University of Nebraska shall be the trustees of the college described in said Act of Congress, approved August 30, 1890, and referred to in sections 85-147 and 85-148. Such fiscal officer as the board may name and designate and appoint to receive and disburse the money under its orders, shall, for all intents and purposes of said section, and of the Act of Congress last mentioned, be the treasurer of the college, and to this officer the State Treasurer shall immediately pay over, upon the order of the board, all money which is now in his hands or which may be hereafter received by virtue of the said Act of Congress for the use and benefit of said college. The board is hereby authorized and empowered to make such orders and regulations for the security, control, management and disbursement of the money as to it shall seem wise and proper and for the best interests of the college.

**Source:** Laws 1891, c. 52, § 3, p. 359; R.S.1913, § 7134; C.S.1922, § 6766; C.S.1929, § 85-152.

**85-150 Cooperative extension work; federal aid; acceptance; disbursement.**

Whole and complete assent and acceptance is given to the provisions and requirements of the Act of Congress passed May 8, 1914, providing for cooperative extension work. The State Treasurer is authorized to receive the grants of money appropriated and to pay warrants drawn by the Director of Administrative Services upon certificates presented by the Board of Regents of the University of Nebraska in payment of expenses of the Cooperative Extension Service of the University of Nebraska in accordance with the terms and conditions specified in the Act of Congress.

**Source:** Laws 1915, c. 231, § 1, p. 535; C.S.1922, § 6767; C.S.1929, § 85-153; R.S.1943, § 85-150; Laws 1991, LB 663, § 67.

**85-151 Cooperative extension work; federal aid; acceptance; payment of warrants.**

The whole and complete acceptance of the Legislature of Nebraska, acting for the people of the State of Nebraska, is hereby given to the provisions and requirements of the Act of Congress, approved May 22, 1928, Chapter 687, section 1, 45 Stat. at L. The State Treasurer is authorized to receive the grants of money appropriated by Congress and to pay warrants drawn by the Director of Administrative Services upon certificates presented by the Board of Regents of the University of Nebraska in payment of expenses of the Cooperative Extension Service of the University of Nebraska in accordance with the terms and conditions specified in the Act of Congress.

**Source:** Laws 1929, c. 12, § 1, p. 85; C.S.1929, § 85-154; R.S.1943, § 85-151; Laws 1991, LB 663, § 68.

**85-152 Repealed. Laws 1953, c. 363, § 1.**

**85-153 Repealed. Laws 1953, c. 363, § 1.**

**85-154 Repealed. Laws 1953, c. 363, § 1.**

**85-155 Repealed. Laws 1953, c. 363, § 1.**

**85-156 Repealed. Laws 1987, LB 656, § 6.**

**85-157 Repealed. Laws 1987, LB 656, § 6.**

**85-158 Repealed. Laws 1987, LB 656, § 6.**

**85-159 Repealed. Laws 1987, LB 656, § 6.**

**85-160 Repealed. Laws 1987, LB 656, § 6.**

**85-161 Nebraska Forest Service; mission; core programs; duties.**

The Nebraska Forest Service is acknowledged within the University of Nebraska. The State Forester appointed pursuant to section 85-162.01 shall be the administrative head of the Nebraska Forest Service and shall report to the vice chancellor of the Institute of Agriculture and Natural Resources.

The mission of the Nebraska Forest Service is to provide education and services to the people of Nebraska for the protection, utilization, and enhancement of the state's tree and forest resources. In carrying out its mission, the Nebraska Forest Service shall provide education and services covering all aspects of planting, protection, care, and utilization of the state's tree and forest resources and shall provide fire protection to all rural land in cooperation with the state's rural fire protection districts.

The Nebraska Forest Service shall provide education and services through four core programs: (1) The Rural Forestry Assistance Program; (2) the Urban and Community Forestry Program; (3) the Forest Health Program; and (4) the Rural Fire Prevention and Control Program.

In carrying out its mission, the Nebraska Forest Service shall work cooperatively with all federal, state, and local entities to maximize services and funding. The Nebraska Forest Service shall work cooperatively with the natural resources districts to coordinate services and funding for the core programs.

**Source:** Laws 2004, LB 917, § 1.

**85-162 Nebraska Forest Service; legislative intent.**

It is the intent of the Legislature to appropriate to the Board of Regents of the University of Nebraska from the General Fund the money necessary to fund the core programs and services of the Nebraska Forest Service. Such appropriations shall be for the sole purpose of carrying out such programs.

**Source:** Laws 2004, LB 917, § 2.

**85-162.01 State Forester; appointment; duties.**

There is hereby created within the University of Nebraska the office of State Forester. The State Forester shall be appointed by the Board of Regents of the University of Nebraska, shall be responsible, subject to the direction of the Board of Regents, for all forestry education and services of the University of Nebraska, and shall have general supervision in the State of Nebraska of (1) all educational work in forestry, including but not limited to demonstrations, publications and mass media information, and (2) service programs relating to forestry and forestation, including but not limited to tree distribution and planting, wildland fire control, development, protection and use of forest resources, and other programs promoting forestry and forestation.

**Source:** Laws 1967, c. 585, § 1, p. 1974; R.S.1943, (1981), § 85-163.02.

**85-162.02 State Forester; powers.**

Subject to the general direction of the Board of Regents, the State Forester shall (1) administer tree distribution programs, (2) develop and implement plans for the prevention and suppression of forest, brush and grassland fires on both public and private lands, (3) develop and implement plans for flood control and soil erosion work on forest lands of the state, (4) develop and implement plans for the protection of forest resources on both public and private lands from insect, disease and other natural pests, (5) carry on technical assistance programs with forest landowners, including growing, harvesting and marketing of wood products, (6) carry on technical assistance programs with forest product processors in the production, utilization and marketing of wood products, including but not limited to forest surveys, feasibility studies, management and marketing clinics, and (7) carry on educational programs in all phases of forestry in the state.

**Source:** Laws 1967, c. 585, § 2, p. 1974; R.S.1943, (1981), § 85-163.03.

**85-162.03 State Forester; cooperate with other agencies.**

In carrying out sections 85-162.01 to 85-162.05, the State Forester shall cooperate with (1) any agency or bureau of the United States, including, but not limited to, the Forest Service, the Natural Resources Conservation Service, the Farm Service Agency, the Bureau of Reclamation, the Corps of Engineers, and the Bureau of Outdoor Recreation, (2) any agency or bureau of the State of Nebraska or its political subdivisions, including, but not limited to, the Game and Parks Commission, the Department of Natural Resources, the State Fire Marshal, the Department of Agriculture, the Adjutant General, the Department of Economic Development, and the Conservation and Survey Division of the University of Nebraska, and (3) any incorporated municipality of the state or any political subdivision of the state, including, but not limited to, rural fire districts, natural resources districts, and weed control districts.

**Source:** Laws 1967, c. 585, § 3, p. 1975; Laws 1977, LB 510, § 9; R.S.1943, (1981), § 85-163.04; Laws 1998, LB 922, § 411; Laws 1999, LB 403, § 8; Laws 2000, LB 900, § 253.

**85-162.04 State Forester; personnel; employment.**

In carrying out sections 85-162.01 to 85-162.05, the Board of Regents may employ such personnel to work under the State Forester as it shall deem necessary or advisable.

**Source:** Laws 1967, c. 585, § 4, p. 1975; R.S.1943, (1981), § 85-163.05; Laws 1998, LB 922, § 412; Laws 2005, LB 39, § 1.

**85-162.05 Board of Regents; State Forester; duties.**

The Board of Regents of the University of Nebraska, with the advice of the State Forester, shall (1) prescribe and implement procedures relating to the implementation and administration of sections 85-162.01 to 85-162.05 and (2) enter into any arrangements and activities it may deem desirable in implementing and carrying out the intent and purposes contemplated by legislation of the federal government calling for state cooperation in the promotion of desirable practices of forestry, forestation, forest management, harvesting, processing, and marketing of forest products, control of forest pests, insects, and disease,

**§ 85-162.05 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

prevention and suppression of wildland fires, watershed management, and windbreak establishment and care.

**Source:** Laws 1967, c. 585, § 5, p. 1975; R.S.1943, (1981), § 85-163.06; Laws 1998, LB 922, § 413.

**85-163 Conservation and Survey Division; creation; duties.**

There is hereby created the Conservation and Survey Division of the University of Nebraska, which shall include the following state surveys: Soil, geological, water and water power, forest, road materials, and industrial. The Conservation and Survey Division shall perform the duties hereinafter defined:

(1) Survey and describe the natural resources of the state, including soil, water, water power, potash, forests, road materials, and cement;

(2) Study the climate, physical features, geology, and mineral resources of the state;

(3) Study and describe the operations, production, and importance of the leading industries of the state;

(4) Investigate and report upon conservation problems of the state;

(5) Study the water-bearing formations of the state, and assist the citizens in locating water supplies;

(6) Secure and preserve the logs of wells drilled in the state, and preserve specimens from each stratum, member, or formation penetrated in said drillings, and inspect such drillings at any time during their progress, and require the person or persons in charge of drilling or prospecting to submit full data in regard to the specimens and logs of the wells;

(7) Prepare and show lantern slides or pictures, including motion pictures, of the state's resources, industries, institutions and development, to be used for educational and industrial purposes within the state and for publicity purposes without the state, and secure and distribute other educational films and slides in Nebraska for educational purposes;

(8) Compile and record, or publish information with reference to, the state's resources, industries and development, and when called upon so to do by an interested party, investigate and report upon oil, mineral, and gas structures and properties situated outside the state and leases or interests therein or thereon being sold or offered for sale in Nebraska. In cases or propositions wherein said investigations show that mineral, oil, or gas properties are misrepresented, or that fraud is practiced in selling same, their officers or agents shall be notified by the Conservation and Survey Division, and if they continue to so operate the same in Nebraska after said notice is given, the division shall report its findings to the Attorney General for action; and

(9) Serve the citizens as an information bureau in regard to the resources, industries, and development of Nebraska.

**Source:** Laws 1921, c. 16, § 1, p. 101; C.S.1922, § 6773; C.S.1929, § 85-163; R.S.1943, § 85-163; Laws 1949, c. 314, § 1, p. 1032; Laws 1975, LB 355, § 1.

**85-163.01 Repealed. Laws 1967, c. 585, § 13.**

**85-163.02 Transferred to section 85-162.01.**

**85-163.03 Transferred to section 85-162.02.**

**85-163.04 Transferred to section 85-162.03.**

**85-163.05 Transferred to section 85-162.04.**

**85-163.06 Transferred to section 85-162.05.**

**85-163.07 Repealed. Laws 1985, LB 10, § 1.**

**85-163.08 Repealed. Laws 1985, LB 10, § 1.**

**85-164 Conservation and Survey Division; powers; director; expenses.**

The Conservation and Survey Division is given police power and authority for the purpose of carrying into effect and performing the duties defined in section 85-163. The Board of Regents shall appoint a chief or director of the division, who shall direct the work of the division, subject to the approval of the regents. All expenses incurred in carrying out any of the provisions of sections 85-163 to 85-165 shall be subject to the approval of the regents of the University of Nebraska, and paid out of appropriations made from time to time by the Legislature.

**Source:** Laws 1921, c. 16, § 2, p. 102; C.S.1922, § 6774; C.S.1929, § 85-164.

**85-165 Conservation and Survey Division; agreements with federal departments.**

The Conservation and Survey Division may enter into such agreements with federal departments as may be necessary to carry on cooperative surveys and investigations in the state, the agreements to be subject to the approval of the Board of Regents of the University of Nebraska.

**Source:** Laws 1921, c. 16, § 3, p. 103; C.S.1922, § 6775; C.S.1929, § 85-165.

**85-166 Repealed. Laws 2000, LB 1135, § 34.**

**85-167 Bessey Memorial Fund; Board of Regents; duties.**

The Board of Regents of the University of Nebraska shall carry into effect the purposes of sections 85-167 to 85-171.

**Source:** Laws 1917, c. 239, § 2, p. 577; C.S.1922, § 6780; C.S.1929, § 85-170; R.S.1943, § 85-167; Laws 2000, LB 1135, § 29.

**85-168 Bessey Memorial Fund; purpose; amount; investment.**

There is appropriated out of any money in the treasury belonging to the General Fund, and not otherwise appropriated, for the creation of the Bessey Memorial Fund the sum of four thousand dollars. The fund shall be and constitute a perpetual memorial fund evidencing the high esteem in which the people of this state hold the memory of the late Professor Charles E. Bessey, who for more than thirty years was closely identified with our state university as professor of botany, Dean of its agricultural college, Dean of Deans, and repeatedly for years its acting chancellor. He was a conspicuous figure in American science and education, one of the great teachers of his age whose work and spirit have been the inspiration of thousands of students, a leader in

§ 85-168 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

the development of scientific agriculture, and the value of whose life and service to Nebraska and the West cannot be estimated in terms of money. Any money in the 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.

**Source:** Laws 1917, c. 239, § 3, p. 577; C.S.1922, § 6781; C.S.1929, § 85-171; R.S.1943, § 85-168; Laws 1969, c. 584, § 125, p. 2426; Laws 1995, LB 7, § 151.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-169 Bessey Memorial Fund; gifts; bequests; acceptance.**

The Board of Regents of the University of Nebraska is hereby authorized, empowered, and directed to accept for the Bessey Memorial Fund gifts and bequests of money or property, whether absolutely or subject to reservation of the income thereof either for a stated period, for the life of the donor, or for the life or lives of other persons designated.

**Source:** Laws 1917, c. 239, § 4, p. 578; C.S.1922, § 6782; C.S.1929, § 85-172; R.S.1943, § 85-169; Laws 2000, LB 1135, § 30.

**85-170 Bessey Memorial Fund; investment; disbursement.**

The Board of Regents of the University of Nebraska shall from time to time invest and reinvest the Bessey Memorial Fund, as well as all unused increase or accumulations thereof, and all additions to the fund which may hereafter be made, in the same kind of securities as is now or may hereafter be authorized for investment of funds pursuant to section 72-1246. In all cases hereunder, money shall be paid out by the State Treasurer only on the direction of the Board of Regents, as in cases for the payment of expenses of the university, on appropriation duly made, and all unused funds, together with such securities, shall be in the custody of the State Treasurer.

**Source:** Laws 1917, c. 239, § 5, p. 578; C.S.1922, § 6783; C.S.1929, § 85-173; R.S.1943, § 85-170; Laws 1947, c. 353, § 1, p. 1104; Laws 1969, c. 584, § 126, p. 2427; Laws 2000, LB 1135, § 31.

**85-171 Bessey Memorial Fund; income; use.**

The Board of Regents of the University of Nebraska shall, as the Bessey Memorial Fund is collected, cause to be paid and distributed the income derived from the fund annually to such other of the widows and dependents of deceased professors as shall then have acceptably served the university for a period of at least twenty-five years. In the selection of beneficiaries among whom distribution of the surplus shall be made, the Board of Regents shall exercise its best judgment, taking into consideration all the facts and circumstances of the case.

**Source:** Laws 1917, c. 239, § 6, p. 578; C.S.1922, § 6784; C.S.1929, § 84-174; R.S.1943, § 85-171; Laws 2000, LB 1135, § 32.

**85-172 Repealed. Laws 2003, LB 68, § 11.**

**85-172.01 Repealed. Laws 1965, c. 578, § 2.**

**85-172.02 Repealed. Laws 1965, c. 578, § 2.**

**85-172.03 Repealed. Laws 1967, c. 402, § 1.**

**85-172.04 Repealed. Laws 1967, c. 402, § 1.**

**85-173 Defunct colleges; records; University of Nebraska; depository.**

The trustees or officers of any college or other institution of learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution, may turn over its records of all grades, attained by its students, to the registrar of the University of Nebraska, to be preserved by his office as a central depository for this valuable historical material.

**Source:** Laws 1937, c. 179, § 1, p. 709; C.S.Supp.,1941, § 85-179.

**85-174 Defunct colleges; records; duties of registrar.**

The office of registrar of the University of Nebraska is hereby designated the central depository for the records of such educational institutions in this state as have ceased to exist, or may cease to exist in the future. The registrar of the University of Nebraska shall, where possible, collect the records of such extinct educational institution, and have the supervision, care, custody and control of said records. The registrar of the University of Nebraska, having the records of such educational institutions, if any, shall, when requested, prepare transcripts of such grade records which may at any time become necessary to the former student for further scholastic work at other institutions, for certification for teaching and other professional positions. Whenever such transcript is made, and after it has been compared with the original, it shall be certified by the registrar of the University of Nebraska, and shall thereafter be considered and accepted as evidence and, for all other purposes, the same as the original could be. For the preparation of such transcript the registrar of the University of Nebraska may charge a nominal fee for services rendered.

**Source:** Laws 1937, c. 179, § 2, p. 709; C.S.Supp.,1941, § 85-180.

**85-175 Defunct colleges; records; duty to deposit.**

The provisions of sections 85-173 and 85-174 shall be mandatory in the case of all educational institutions becoming extinct after February 23, 1937.

**Source:** Laws 1937, c. 179, § 3, p. 710; C.S.Supp.,1941, § 85-181.

**85-176 College of Law; state publications; number furnished free.**

The following publications of the State of Nebraska shall, as they are from time to time issued, be delivered by the respective officer having custody thereof to the library of the College of Law of the University of Nebraska:

(1) Fifteen copies of the Nebraska Reports, fifteen copies of the Nebraska Appellate Reports, five copies of the Opinions of the Attorney General, five copies of the Blue Book, and two copies each of the reports and recommendations of the Judicial Council and of the reports and recommendations of the Legislative Council;

(2) Copies of the session laws and the journal of the Legislature as provided in section 49-506;

(3) One copy each of the annual and biennial reports of the state officers who are required by law to make an annual or biennial report; and

(4) Statutes issued by the Supreme Court shall be requisitioned by the librarian of the College of Law, allowing ten copies for the library of the College of Law, five copies for the Legal Aid Bureau and the editors and staff of the Nebraska Law Review, one copy each for every full-time member of the law faculty, and no more than fifteen copies for the university libraries, nonlaw faculty, and administrative officers of the university combined.

**Source:** Laws 1947, c. 185, § 1, p. 610; Laws 1951, c. 345, § 2, p. 1133; Laws 1961, c. 243, § 4, p. 727; Laws 1987, LB 572, § 8; Laws 1995, LB 271, § 9.

**85-177 College of Law; state publications; additional copies; requisition.**

In order to enable the library of the College of Law to augment its collections, the librarian of the College of Law of the University of Nebraska is authorized to requisition from the respective officer having custody thereof up to one hundred copies of the following state publications: Nebraska Reports, Nebraska Appellate Reports, Legislative Journals, Session Laws, replacement volumes and supplements to the Revised Statutes, and Opinions of the Attorney General. The copies of the Legislative Journals and Session Laws may be provided in print or electronic format as the Secretary of State determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

**Source:** Laws 1947, c. 185, § 2, p. 611; Laws 1951, c. 345, § 3, p. 1133; Laws 1961, c. 243, § 5, p. 727; Laws 1995, LB 271, § 10; Laws 2000, LB 534, § 8.

**Cross References**

For other provisions for distribution of publications to College of Law, see sections 24-209, 49-506, and 49-617.

**85-178 Repealed. Laws 2003, LB 68, § 11.**

**85-179 College of Medicine; care and rehabilitation of children with disabilities; interchange of facilities for teaching and treatment.**

The Board of Regents of the University of Nebraska may cooperate with public or private agencies engaged in the care and rehabilitation of children with disabilities so as to make available an interchange of facilities for teaching and treatment purposes under such terms as may be mutually agreed upon by the Board of Regents and the several agencies desiring the use of such land.

**Source:** Laws 1955, c. 351, § 3, p. 1073; Laws 1997, LB 346, § 59.

**85-179.01 College of Medicine; physicians' assistants and associates; program for education and training; establish.**

Subject to statutory authorization and approval by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414, the University of Nebraska through its College of Medicine may establish, develop, implement, and from time to time amend, change, and modify a general plan or program for the education and training of physicians' assistants and physicians' associates and to accomplish such purpose may:

(1) Establish a separate curriculum to be supervised and carried out by the faculty of the College of Medicine;

(2) Employ such additional faculty members and otherwise procure and contract for such professional and technical assistance as may be necessary or advisable;

(3) Acquire by purchase, lease, or gift such personal property as may be required or useful in connection with such program and the implementation thereof; and

(4) Cooperate and contract with other governmental agencies and subdivisions of government, both state and federal, and funding organizations.

**Source:** Laws 1972, LB 985, § 1; Laws 1991, LB 663, § 69.

**85-179.02 College of Medicine; physicians' assistant or associate, defined.**

For purposes of sections 85-179.01 to 85-179.03, unless the context otherwise requires, physicians' assistant or physicians' associate shall mean a person who is qualified by training and experience to act as an assistant to, or an associate of, a licensed physician.

**Source:** Laws 1972, LB 985, § 2.

**85-179.03 College of Medicine; physicians' assistants or associates; Board of Regents; powers.**

The power and authority granted by sections 85-179.01 to 85-179.03 may be exercised in whole or in part and from time to time as the Board of Regents of the University of Nebraska may in its discretion determine.

**Source:** Laws 1972, LB 985, § 3.

**85-179.04 Transferred to section 71-1,107.15.**

**85-179.05 Transferred to section 71-1,107.16.**

**85-179.06 Transferred to section 71-1,107.17.**

**85-179.07 Transferred to section 71-1,107.18.**

**85-179.08 Transferred to section 71-1,107.19.**

**85-179.09 Transferred to section 71-1,107.20.**

**85-179.10 Transferred to section 71-1,107.21.**

**85-179.11 Transferred to section 71-1,107.22.**

**85-179.12 Transferred to section 71-1,107.23.**

**85-179.13 Transferred to section 71-1,107.24.**

**85-179.14 Transferred to section 71-1,107.25.**

**85-179.15 Transferred to section 71-1,107.26.**

**85-179.16 Transferred to section 71-1,107.27.**

**85-179.17 Transferred to section 71-1,107.28.**

**85-179.18 Transferred to section 71-1,107.29.**

**85-180 Repealed. Laws 1985, LB 204, § 4.**

**85-180.01 Repealed. Laws 1985, LB 204, § 4.**

**85-180.02 Repealed. Laws 1985, LB 204, § 4.**

**85-180.03 Repealed. Laws 1985, LB 204, § 4.**

**85-180.04 Repealed. Laws 1985, LB 204, § 4.**

**85-180.05 Repealed. Laws 1985, LB 204, § 4.**

**85-180.06 Repealed. Laws 1983, LB 533, § 6.**

**85-180.07 Repealed. Laws 1985, LB 204, § 4.**

**85-180.08 Repealed. Laws 1985, LB 204, § 4.**

**85-180.09 Repealed. Laws 1985, LB 204, § 4.**

**85-180.10 Repealed. Laws 1985, LB 204, § 4.**

**85-180.11 Repealed. Laws 1983, LB 533, § 6.**

**85-180.12 Repealed. Laws 1985, LB 204, § 4.**

**85-180.13 Veterinary medicine and surgery; cooperative program authorized; cooperative agreement; requirements.**

The educational program for veterinary medicine and surgery at the University of Nebraska may be established and operated by the Board of Regents only as a cooperative program with a college or colleges of veterinary medicine in other states subject to approval of the program by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414. The Board of Regents may enter into agreements with one or more institutions of postsecondary education in states which have operational colleges of veterinary medicine for the purpose of establishing a cooperative program providing for the education and training of Nebraska resident students in veterinary medicine and cooperative activities in teaching, research, and service in veterinary medicine. Any such cooperative agreement shall provide that:

(1) The University of Nebraska shall have joint responsibility for establishing policies in matters of curriculum, academic standards, research, student admissions, and conduct of the cooperative program in veterinary medicine;

(2) Clinical training at facilities of the University of Nebraska shall be available to all students enrolled in the cooperative program; and

(3) The University of Nebraska shall receive financial consideration for each nonresident student who receives clinical training at University of Nebraska facilities.

**Source:** Laws 1985, LB 204, § 1; Laws 1991, LB 663, § 70.

**85-180.14 Cooperative veterinary medicine program; Board of Regents; Coordinating Commission for Postsecondary Education; powers.**

The Board of Regents may construct and operate such facilities as shall be approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 and funded by the Legislature and may employ necessary faculty and staff to provide the clinical training of students in the cooperative veterinary medicine program pursuant to section 85-180.13.

Proposed capital construction projects for veterinary medical facilities shall be reviewed, monitored, and approved or disapproved by the commission pursuant to section 85-1414 under the same standards of review applied by the commission to other capital construction projects.

**Source:** Laws 1985, LB 204, § 2; Laws 1991, LB 663, § 71; Laws 1994, LB 683, § 1.

**85-181 Repealed. Laws 1991, LB 663, § 137.**

**85-182 Repealed. Laws 1988, LB 802, § 41.**

**85-183 Repealed. Laws 1988, LB 802, § 41.**

**85-184 Repealed. Laws 2003, LB 68, § 11.**

**85-185 Repealed. Laws 2003, LB 68, § 11.**

**85-186 Repealed. Laws 1988, LB 802, § 41.**

**85-187 Repealed. Laws 1988, LB 802, § 41.**

**85-188 Repealed. Laws 1988, LB 802, § 41.**

**85-189 Repealed. Laws 1988, LB 802, § 41.**

**85-190 Repealed. Laws 2003, LB 68, § 11.**

**85-191 Repealed. Laws 1988, LB 802, § 41.**

**85-192 University of Nebraska at Omaha Cash Fund; University of Nebraska at Omaha Trust Fund; created; purposes; disbursements; investment.**

There is hereby created a University of Nebraska at Omaha Cash Fund which shall consist of all fees and other money collected from students at the University of Nebraska at Omaha by authority of the Board of Regents of the University of Nebraska for university purposes, all receipts from all university activities at the University of Nebraska at Omaha collected in connection with the operation of such university, and the money and funds received at the time the University of Nebraska at Omaha was established. A record shall be kept separating such money and funds into appropriate and convenient accounts. All money and funds accruing to the cash fund when appropriated by the Legislature shall be used for the maintenance and operation of the University of Nebraska at Omaha and shall at all times be subject to the orders of the Board of Regents. No warrant shall be issued against such fund unless there is money sufficient to pay the same. There may be retained at the University of Nebraska at Omaha a sum not to exceed one hundred seventy-five thousand dollars out of such money to make settlement and equitable adjustments to students entitled thereto, to carry on university activities contributing to the fund, and to provide for contingencies. The fund shall be in the custody of the State Treasurer. Any money in such 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.

There is hereby created a University of Nebraska at Omaha Trust Fund which shall consist of all property, real or personal, now or hereafter acquired by or for the municipal University of Omaha by donation or bequest to it, which

property shall be held and applied in the manner and according with the provisions of the will, deed, or instrument making such donation or bequest. All future donations or bequests to or for the University of Nebraska at Omaha shall be a part of such trust fund. Such trust fund shall be held and managed in such manner as the Board of Regents shall determine. Such holdings and management shall be in strict accordance with all terms of the donation or bequest, but in the absence of any investment instructions the funds may be invested by or at the direction of the Board of Regents in such investments as are authorized for trustees, guardians, personal representatives, or administrators under the laws of Nebraska. Any money in such 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.

**Source:** Laws 1967, c. 620, § 11, p. 2081; Laws 1969, c. 584, § 128, p. 2428; Laws 1985, LB 151, § 2; Laws 1988, LB 802, § 39; Laws 1995, LB 7, § 152.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-193 Repealed. Laws 1988, LB 802, § 41.**

**85-194 University of Nebraska at Omaha; laws applicable.**

Chapter 85, articles 1, 4, and 5, relating to the Board of Regents and the University of Nebraska shall be applicable to the University of Nebraska at Omaha except as modified or limited by section 85-192.

**Source:** Laws 1967, c. 620, § 13, p. 2082; Laws 1978, LB 756, § 53; Laws 1988, LB 802, § 40; Laws 2003, LB 68, § 8.

**85-195 Transferred to section 85-606.01.**

**85-196 Repealed. Laws 1971, LB 208, § 1.**

**85-197 Repealed. Laws 1971, LB 208, § 1.**

**85-198 Repealed. Laws 1971, LB 208, § 1.**

**85-199 Repealed. Laws 1971, LB 208, § 1.**

**85-1,100 Repealed. Laws 1987, LB 13, § 1.**

**85-1,101 Repealed. Laws 1972, LB 1433, § 7.**

**85-1,102 Repealed. Laws 1972, LB 1433, § 7.**

**85-1,103 University of Nebraska, College of Medicine; travel expense of senior medical students, residents, interns; conditions.**

The dean of the College of Medicine of the University of Nebraska may authorize the expenditure of funds when appropriated by the Legislature for travel expenses of senior medical students, medical residents, and interns to communities in Nebraska for the purpose of locating in Nebraska to practice their profession. Payments shall be limited to one hundred dollars for a round trip visit and not more than three such visits shall be approved for any one student, medical resident, or intern. The College of Medicine shall keep records

to show the result of such expenditures. The expenses paid shall be in accordance with expense practices of the state government and as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1972, LB 1489, § 1; Laws 1981, LB 204, § 218.

**85-1,104 University of Nebraska Institute of Agriculture and Natural Resources; established; administration.**

A University of Nebraska Institute of Agriculture and Natural Resources shall be established at the University of Nebraska-Lincoln which shall embrace but not be limited to the following divisions or administrative units: (1) College of Agricultural Sciences and Natural Resources; (2) Agricultural Research Division; (3) Cooperative Extension Service; (4) Conservation and Survey Division; and (5) a veterinary medicine and surgery program as a cooperative program only as provided in section 85-180.13. The University of Nebraska Institute of Agriculture and Natural Resources shall be headed by a vice chancellor and each division or administrative unit shall have a dean, director, or other chief administrative officer.

**Source:** Laws 1973, LB 149, § 3; Laws 1987, LB 656, § 5; Laws 1991, LB 663, § 72.

**85-1,104.01 Cooperative Extension Service; employ aquaculturist.**

The Cooperative Extension Service of the University of Nebraska shall employ one person who has experience and knowledge in the area of aquaculture as defined in section 2-3804.01.

**Source:** Laws 1987, LB 561, § 5.

**85-1,105 University of Nebraska Institute of Agriculture and Natural Resources; vice chancellor; duties.**

The vice chancellor for the University of Nebraska Institute of Agriculture and Natural Resources shall be responsible for providing leadership for all agricultural and natural resources affairs in the University of Nebraska as they involve the office of chancellor of the University of Nebraska-Lincoln and the President and the Board of Regents of the University of Nebraska. He shall coordinate agricultural, natural resources, and related matters of the University of Nebraska-Lincoln. As senior agricultural and natural resources administrator in the University of Nebraska, he and the chancellor of the University of Nebraska-Lincoln shall together provide advice and counsel to and assist the President and Board of Regents of the University of Nebraska in agricultural, natural resources, and related matters.

**Source:** Laws 1973, LB 149, § 4.

**85-1,106 Board of Regents; lands in Lancaster County; power to sell; Agricultural Field Laboratory Fund; created; use.**

The Board of Regents of the University of Nebraska is hereby authorized to sell, on terms and conditions to be prescribed by the board, lands in Lincoln and immediate vicinity located in sections 2, 3, 9, 10, 11, 15, and 27, township 10 north, range 7 east, Lancaster County, Nebraska, which have been used for agricultural research by the University of Nebraska Institute of Agriculture and Natural Resources and which function is being transferred to the Agricultural

Research and Development Center and to other locations suitable for agricultural research. These lands are more particularly described as follows:

(1) The southwest quarter and that part of the west half of the southeast quarter lying west of the centerline of Stevens Creek and that part of the east half of the northwest quarter lying south of the centerline of Stevens Creek and that part of the west half of the northeast quarter lying southwest of the centerline of Stevens Creek, all in said section 2.

(2) The southeast quarter and the east half of the southwest quarter of said section 3.

(3) Lot 31 of irregular tracts in the southeast quarter of said section 9.

(4) Lots 15, 23, 25, 29, 30, 31, 32, 33, 34, 35, 38, and 39, of irregular tracts, all in said section 10.

(5) The north half of the northwest quarter, and the north half of the northeast quarter and irregular tract lots 1, 2, 4, 6, and 8, all in said section 11.

(6) Lot 51 of irregular tracts in the northeast quarter, and lots 1 through 16, Castleton, except for a parcel described as follows: A tract in lots 7, 8, 9, and 10, Castleton, beginning at the southwest corner of said lot 9, Castleton, thence north along the west line of said lots 8 and 9, a distance of seven hundred twenty-seven feet, thence east along a line perpendicular to the west line of said lot 9, a distance of one hundred nineteen and nine-tenths feet, thence southeast to the right on a curve having a radius of three hundred twenty-two and thirteen-hundredths feet through a central angle of eighty degrees thirty-two minutes a distance of four hundred fifty-four and seventy-five-hundredths feet, thence southeasterly a distance of four hundred fifty-six and six-tenths feet, more or less, to the south line of said lot 10, thence west along the south line of said lots 9 and 10 to the point of beginning; and lots 1 to 11, block 1, lots 1, 2, 17, 18, and 19, block 3, lots 1 and 2, block 4 and outlot A, Rosemont Fourth Addition, all in said section 15.

(7) Lot 56 of irregular tracts in the northwest quarter of said section 27.

There is hereby created a fund to be known as the Agricultural Field Laboratory Fund to which shall be credited all proceeds from the sale of such real estate. All money received from time to time pursuant to the sale of such real estate and which is credited to such fund is hereby appropriated to the Board of Regents of the University of Nebraska to be used exclusively for the development and improvement of the University of Nebraska Agricultural Research and Development Center at Mead, Nebraska, or for acquisition, development, and improvement of replacement real estate to replace the real estate described in subdivisions (1) through (7) of this section to be used for agricultural research. Money credited to the Agricultural Field Laboratory Fund shall be expended prior to the expenditure of any other legislative appropriation for the development and improvement of such center or replacement real estate.

**Source:** Laws 1974, LB 938, § 1; Laws 1991, LB 663, § 73; Laws 1997, LB 13, § 1.

**85-1,107 Animal Research and Diagnosis Revolving Fund; created.**

There is hereby created a fund to be known as the Animal Research and Diagnosis Revolving Fund.

**Source:** Laws 1976, LB 869, § 2.

**85-1,108 Animal Research and Diagnosis Revolving Fund; how funded.**

Fees for diagnostic and testing services performed for individuals, corporations, and agencies of government shall be paid into the Animal Research and Diagnosis Revolving Fund.

**Source:** Laws 1976, LB 869, § 3.

**85-1,109 Animal Research and Diagnosis Revolving Fund; uses.**

The Animal Research and Diagnosis Revolving Fund shall be used to provide financial support for research and other service functions performed by the diagnostic laboratory of the University of Nebraska Animal Health Research Center.

**Source:** Laws 1976, LB 869, § 4.

**85-1,110 Diagnostic laboratory of Animal Health Research Center; fee schedule for services.**

The diagnostic laboratory of the University of Nebraska Animal Health Research Center shall establish a fee schedule showing fees to be charged for various diagnostic and testing services performed by the laboratory.

**Source:** Laws 1976, LB 869, § 5.

**85-1,111 University Buildings Renovation and Land Acquisition Fund; created; authorized uses.**

There is hereby created a University Buildings Renovation and Land Acquisition Fund. All money accruing to this fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for those projects of repair, remodeling, and renovation of buildings of the university and for those equipment and land acquisition projects of the university authorized pursuant to this section, as long as no such repair, remodeling, or renovation project shall provide for construction of an addition to any building, unless required by any federal law or law of this state relating to building safety or relating to building access for handicapped persons. No expenditure may be made from such fund without prior approval by a resolution of the Board of Regents.

The Board of Regents is authorized to make expenditures from the University Buildings Renovation and Land Acquisition Fund for the following projects and associated expenses: (1) Repair, remodel, and renovate Bessey Hall, three million four hundred fifty-seven thousand eight hundred seventy dollars, and Architectural Hall and Former Law Building, four million three hundred twenty-six thousand two hundred sixty-six dollars at the University of Nebraska-Lincoln; (2) repair, remodel, and renovate Arts and Sciences Hall at the University of Nebraska at Omaha, one million three hundred eighty-five thousand five hundred dollars; (3) repair, remodel, and renovate the Nebraska Psychiatric Institute at the University of Nebraska Medical Center, one million fifty thousand dollars; (4) acquire certain real property for public use by the University of Nebraska at Omaha, three million two hundred eighty-two thousand four hundred dollars; (5) purchase movable equipment for Bessey Hall and Architecture Hall and Former Law Building at the University of Nebraska-Lincoln, and Arts and Sciences Hall at the University of Nebraska at Omaha, one million four hundred thousand dollars; and (6) administrative and financ-

§ 85-1,111 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

ing costs associated with any contract which the Board of Regents may enter into pursuant to section 85-1,112 to implement any of the projects listed in subdivisions (1) to (5) of this section, an amount not to exceed four hundred ten thousand dollars.

In addition to those building repair, remodeling, or renovation projects and equipment and land acquisition projects specifically listed in this section, the Board of Regents is further authorized to make expenditures from the University Buildings Renovation and Land Acquisition Fund, which shall include any investment income received from the investment of such fund, for any other building repair, remodeling, or renovation project or land acquisition project which shall be specifically approved by the Legislature.

**Source:** Laws 1983, LB 410, § 4; Laws 1985, LB 728, § 2; Laws 1986, LB 842, § 5.

**85-1,112 Buildings renovation and land acquisition projects; Board of Regents; powers.**

In order to accomplish any projects authorized by section 85-1,111, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the university and providing for the long-term payment of the cost of such project from the University Buildings Renovation and Land Acquisition Fund. In no case shall any such contract run for a period longer than ten years or exceed fourteen million nine hundred two thousand thirty-six dollars, exclusive of administrative costs, financing costs, and reserves dedicated to secure payment of contracts. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents.

**Source:** Laws 1983, LB 410, § 5; Laws 1985, LB 728, § 3; Laws 1986, LB 842, § 6.

**85-1,113 University Facilities Fund; created; authorized uses.**

There is hereby created a University Facilities Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for those construction projects authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the Board of Regents.

The Board of Regents is authorized to make expenditures from the University Facilities Fund for the following projects and associated expenses: (1) Renovation of the University of Nebraska at Omaha Arts and Sciences Hall, two million eight hundred forty-six thousand two dollars; (2) an addition to the University of Nebraska at Kearney Copeland Hall, two million two hundred fifty-seven thousand one hundred seventy-four dollars; and (3) University of Nebraska-Lincoln Institute of Agriculture and Natural Resources projects, including (a) construction of a Headquarters Building at the Agricultural Research and Development Center, Mead, Nebraska, two million six hundred fifteen thousand three hundred seventy-eight dollars, (b) renovation of the Elliot Building at the Panhandle Research and Extension Center, Scottsbluff, Nebras-

ka, four hundred thirty-one thousand eight hundred seven dollars, (c) construction of a Swine Research Growing and Finishing Facility at the West Central Research and Extension Center, North Platte, Nebraska, three hundred eighteen thousand nine hundred forty-nine dollars, (d) construction of a Research and Extension Support Building at the West Central Research and Extension Center, North Platte, Nebraska, two hundred eighty-four thousand six hundred dollars, (e) construction of a Staff/Laboratory/Conference Center at the Gudmundsen Sandhill Laboratory, Whitman, Nebraska, two hundred seventy-six thousand seven hundred forty-nine dollars, and (f) construction of a Swine Research Growing and Finishing Facility at the Northeast Research and Extension Center, Concord, Nebraska, ninety-five thousand one hundred ninety-four dollars. The cost limitations set forth in this section shall be exclusive of sums previously expended from other sources for planning and administrative costs, financing costs, and other costs associated with any contract which the Board of Regents may enter into pursuant to this section and section 85-1,114 to implement the projects listed in this section. The cost limitation set forth in subdivision (3)(a) of this section may be exceeded with private funds not to exceed two hundred twenty-five thousand dollars. The cost limitation set forth in subdivision (3)(f) of this section may be exceeded with private funds not to exceed sixty-six thousand dollars. The Board of Regents shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University Facilities Fund and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-1,114 in such manner and format as prescribed by the Department of Administrative Services.

The Board of Regents is authorized to make expenditures for the purposes stated in this section from investment income balances in the University Facilities Fund. Any balance existing in the University Facilities Fund or in any reserve funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,114 shall be transferred to the General Fund either on July 15, 1997, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to section 85-1,114 are discharged, whichever occurs first. Any balance existing in any reserve funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,114 in excess of such level as may be required by such contract shall be annually transferred to the General Fund on July 15.

**Source:** Laws 1986, LB 842, § 3; Laws 1992, Third Spec. Sess., LB 9, § 3; Laws 1993, LB 323, § 1.

**85-1,114 University facilities construction projects; Board of Regents; powers.**

In order to accomplish any projects authorized by section 85-1,113, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the university and providing for the long-term payment of the cost of such project from the University Facilities Fund. In no case shall any such contract extend for a period beyond July 15, 1997, or obligate payments beyond those which may be satisfied with funds available pursuant to sections 77-2602 and 85-1,113. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any

appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents. The Board of Regents may also convey or lease and lease back all or any part of the projects authorized by section 85-1,113 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

**Source:** Laws 1986, LB 842, § 4; Laws 1992, Third Spec. Sess., LB 9, § 4.

**85-1,115 Lied Center for Performing Arts; Board of Regents; powers.**

In order to accomplish the construction of the Lied Center for Performing Arts, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, corporation, or foundation providing for the implementation of such project of the university and providing for the long-term payment of the cost of such project. In no case shall any such contract run for a period longer than twenty years or exceed twenty million dollars, exclusive of administrative costs, credit enhancement costs, financing costs, and reserves dedicated to secure payment of contracts. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents.

**Source:** Laws 1986, LB 842, § 7.

**85-1,116 University Facility Improvement Fund; created; authorized uses.**

There is hereby created the University Facility Improvement Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for those construction projects of the university authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the Board of Regents.

The Board of Regents may make expenditures from the University Facility Improvement Fund for the following project: Renovation of Morrill Hall, three million nine hundred thirty-five thousand six hundred forty-five dollars, excluding funds from private donations, sums previously expended for planning, and administrative and financing costs associated with any contract which the Board of Regents may enter into pursuant to this section and section 85-1,117 to implement the project listed in this section.

The Board of Regents may make expenditures for the purposes stated in this section from investment income balances in the University Facility Improvement Fund. The Board of Regents may make expenditures from such fund in amounts which, in combination with interest accrued on any construction funds and reserve funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,117, are sufficient to satisfy the

financial obligations incurred in such contracts entered into by the Board of Regents. Any balance existing in the University Facility Improvement Fund, any reserve funds, or any other funds created as part of a long-term contract entered into by the Board of Regents pursuant to section 85-1,117 shall be transferred to the General Fund either on June 15, 1998, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to section 85-1,117 are discharged, whichever occurs first.

**Source:** Laws 1987, LB 218, § 3.

**85-1,117 Renovation of Morrill Hall; Board of Regents; powers.**

In order to accomplish the project authorized by section 85-1,116, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the university and providing for the long-term payment of the cost of such project from the University Facility Improvement Fund. In no case shall any such contract run for a period longer than eleven years or exceed three million nine hundred thirty-five thousand six hundred forty-five dollars exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts. The Board of Regents shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Regents. The Board of Regents may also convey or lease and lease back all or any part of the projects authorized by section 85-1,116 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

**Source:** Laws 1987, LB 218, § 4.

**85-1,118 Repealed. Laws 2003, LB 68, § 11.**

**85-1,119 Kearney State College; transfer of property, obligations, and employees; collective bargaining.**

(1) On July 1, 1991, all property rights, titles, assets, contracts, obligations, and choses in action of any kind existing as of June 30, 1991, owned, held, or controlled by Kearney State College or the Board of Trustees of the Nebraska State Colleges for the benefit of Kearney State College shall be transferred to, assumed by, and carried out by the Board of Regents of the University of Nebraska for the operation and benefit of the University of Nebraska at Kearney subject, however, to the following:

(a)(i) Title to (A) facilities on the campus of Kearney State College and all or any portion of the revenue derived from such facilities which have been pledged to the payment of the principal of and interest on revenue bonds of the board of trustees or (B) facilities on the campus of Kearney State College which have been constructed, repaired, or renovated with the proceeds of revenue

bonds payable from student fees shall remain vested in the board of trustees until the bonds outstanding with respect to such facilities have been discharged. Upon the discharge of the bonds outstanding with respect to any such facility, title to such facility shall be transferred to and vested in the Board of Regents without any further or additional action by the board of trustees or the Board of Regents.

(ii) All facilities specified in subdivision (a)(i) of this subsection shall be leased by the board of trustees to the Board of Regents as of July 1, 1991, upon such terms and conditions as the board of trustees and the Board of Regents shall determine, except that (A) payments from the Board of Regents to the board of trustees pursuant to such leases shall be sufficient to pay the principal of and interest on the bonds outstanding with respect to such facilities and shall include a reasonable fee set by and paid to the board of trustees to cover actual and necessary expenses incurred by the board of trustees for managing the bond program of the University of Nebraska at Kearney until all bonds which are outstanding as of July 1, 1991, and which were issued with respect to the leased facilities have matured and are retired, (B) the Board of Regents shall have the right to establish rents, charges, rates, and fees for the use of such facilities and to receive and collect all revenue, rents, fees, income, profits, and charges of whatever nature and howsoever derived from such facility, and (C) the Board of Regents shall keep, perform, satisfy, and comply with all terms, covenants, conditions, and agreements contained in the documents relating to the issuance of the bonds outstanding with respect to each such facility;

(b) The obligations for the payment of money of the board of trustees incurred pursuant to Laws 1983, LB 410, Laws 1987, LB 218, and Laws 1987, LB 784, shall remain the obligations of the board of trustees. All other obligations of the board of trustees incurred pursuant to such laws shall, upon July 1, 1991, be and become obligations of the Board of Regents. Unless title to the property acquired and the facilities constructed, repaired, remodeled, or renovated pursuant to such laws is required to remain vested with the board of trustees pursuant to subdivision (a)(i) of this subsection, title to such property and facilities shall vest in the Board of Regents on July 1, 1991; and

(c) Prior to July 1, 1991, the board of trustees and the Board of Regents shall enter into such agreements as they deem necessary and appropriate to carry out the provisions of sections 85-1,119 to 85-1,123 for the conveyance and transfer of the properties, rights, and obligations provided under such sections, to make appropriate provisions with respect to existing debt obligations, including revenue bonds, of the board of trustees and the Nebraska State Colleges Facilities Corporation pertaining to Kearney State College, and to provide for an orderly transition and assumption by the Board of Regents of the activities and operations of Kearney State College. The board of trustees, acting as a corporation for the revenue bond program for Kearney State College or the Nebraska State College Facilities Corporation, and its officers and staff shall be reimbursed for any expenses incurred in carrying out any action modifying the revenue bond program pursuant to sections 85-1,119 to 85-1,123.

(2)(a) On July 1, 1991, all employees of Kearney State College shall be transferred to the University of Nebraska. The transferred employees shall retain all benefits and status of employment accrued through June 30, 1991, including retirement benefits not vested.

(b) On July 1, 1991, the transferred employees, except academic, faculty, and teaching employees who are included in a collective-bargaining unit and represented by a certified collective-bargaining agent, shall cease participation in the employee fringe benefit programs of Kearney State College and shall begin participation in the University of Nebraska systemwide fringe benefits program and be entitled to receive the same fringe benefits of employment made available to other employees of the University of Nebraska under such program.

(c) On July 1, 1990, the Board of Regents of the University of Nebraska shall have authority to enter into a collective-bargaining agreement with any certified collective-bargaining agent for academic, faculty, and teaching employees of Kearney State College who are represented by a certified collective-bargaining agent covering any period beginning on or after July 1, 1991. The Board of Regents shall bargain and negotiate in good faith with any such bargaining agent pursuant to the State Employees Collective Bargaining Act. On July 1, 1991, all academic, faculty, and teaching employees of the University of Nebraska at Kearney shall cease participation in the retirement program of Kearney State College and shall begin participation in the systemwide retirement program of the University of Nebraska on the same basis as other academic, faculty, and teaching employees of the University of Nebraska.

**Source:** Laws 1989, LB 247, § 7; Laws 2003, LB 68, § 9.

**Cross References**

**State Employees Collective Bargaining Act**, see section 81-1369.

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

**85-1,120 Repealed. Laws 2003, LB 68, § 11.**

**85-1,121 Repealed. Laws 2003, LB 68, § 11.**

**85-1,122 University of Nebraska at Kearney; provisions applicable.**

The provisions of Chapter 85 relating to the Board of Regents of the University of Nebraska shall be applicable to the University of Nebraska at Kearney except as modified or limited.

**Source:** Laws 1989, LB 247, § 10.

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

**85-1,123 University of Nebraska at Kearney Cash Fund; University of Nebraska at Kearney Trust Fund; created; use; investment.**

(1) There is hereby created the University of Nebraska at Kearney Cash Fund. The fund shall consist of all fees and other money collected from students at the University of Nebraska at Kearney by authority of the Board of Regents of the University of Nebraska for university purposes, all receipts from all university activities at the University of Nebraska at Kearney collected in connection with the operation of such university, and the money and funds received at the time the University of Nebraska at Kearney was established. A record shall be kept separating the money and funds into appropriate and convenient accounts. All money and funds accruing to the fund when appropriated by the Legislature

§ 85-1,123 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

shall be used for the maintenance and operation of the University of Nebraska at Kearney and shall at all times be subject to the orders of the Board of Regents. No warrant shall be issued against the fund unless there is money sufficient to pay the same. There may be retained at the University of Nebraska at Kearney a sum not to exceed one hundred seventy-five thousand dollars out of the fund to make settlement and equitable adjustments to students entitled thereto, to carry on university activities contributing to the fund, and to provide for contingencies. The University of Nebraska at Kearney Cash Fund shall be in the custody of the State Treasurer.

(2) There is hereby created the University of Nebraska at Kearney Trust Fund, which fund shall consist of all property, real or personal, acquired as of July 1, 1991, or at any time thereafter by or for Kearney State College by donation or bequest to it, which property shall be held and applied in the manner and according with the provisions of the will, deed, or instrument making such donation or bequest. All future donations or bequests to the University of Nebraska at Kearney shall be a part of such fund. The fund shall be held and managed in such manner as the Board of Regents shall determine. The holdings and management shall be in strict accordance with all terms of the donation or bequest, except that in the absence of any investment instructions, the funds may be invested by or at the direction of the Board of Regents in such investments as are authorized for trustees, guardians, personal representatives, or administrators under the laws of Nebraska.

**Source:** Laws 1989, LB 247, § 11.

Since five judges of the court do not hold that this section is unconstitutional, the section is constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

**85-1,124 Repealed. Laws 2003, LB 68, § 11.**

**85-1,125 Repealed. Laws 2000, LB 1379, § 7.**

**85-1,126 Risk-loss trusts authorized; requirements.**

The Board of Regents of the University of Nebraska may establish, maintain, and administer one or more risk-loss trusts for the purpose of paying losses and expenses incurred by the university from (1) general and professional liability, including, but not limited to, judgments, awards, and settlements of claims and suits arising under the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Miscellaneous Claims Act, and the State Tort Claims Act, (2) damage, destruction, or loss of real or personal property, and (3) errors and omissions liability. Any such risk-loss trust shall contain provisions relating to defense and settlement of claims and suits covered by the trust. No risk-loss trust established pursuant to this section shall be a member of the Nebraska Property and Liability Insurance Guaranty Association.

**Source:** Laws 1990, LB 542, § 1.

**Cross References**

**Nebraska Hospital-Medical Liability Act**, see section 44-2855.  
**State Contract Claims Act**, see section 81-8,302.  
**State Miscellaneous Claims Act**, see section 81-8,294.  
**State Tort Claims Act**, see section 81-8,235.

**85-1,127 Risk-loss trust; applicability of provisions; Attorney General; State Claims Board; duties.**

Whenever any claim or suit against the University of Nebraska or any of its officers, agents, or employees is covered by a risk-loss trust established pursuant to section 85-1,126, the provisions of such trust on defense and settlement of claims and suits covered by the trust shall be applicable notwithstanding any inconsistent provisions of the State Tort Claims Act. The Attorney General and State Claims Board shall cooperate with the university in administering the defense and settlement provisions of any such trust.

**Source:** Laws 1990, LB 542, § 2.

**Cross References**

State Tort Claims Act, see section 81-8,235.

**85-1,128 University of Nebraska Eppley Science Hall Construction Fund; created; use; investment.**

There is hereby created the University of Nebraska Eppley Science Hall Construction Fund. All money accruing to the fund is hereby appropriated to the Board of Regents of the University of Nebraska and shall be used exclusively for the project authorized pursuant to this section. No expenditures shall be made from such fund without prior approval by a resolution of the Board of Regents. Any money in the 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.

The Board of Regents may make expenditures from the University of Nebraska Eppley Science Hall Construction Fund for the following project:

University of Nebraska Eppley Science Hall construction project, four hundred seventy-five thousand dollars, excluding federal funds, institutional cash funds, and private donations. The total cost of the project is currently estimated at eight million seven hundred forty thousand dollars, which amount also includes five million dollars of federal funds and two million dollars of private donations. Any unexpended balance existing in the University of Nebraska Eppley Science Hall Construction Fund shall be transferred to the General Fund either on June 15, 1993, or when any financial obligations incurred in the contracts entered into by the Board of Regents for the completion of the University of Nebraska Eppley Science Hall construction project are discharged, whichever occurs first.

**Source:** Laws 1990, LB 1220, § 3; Laws 1994, LB 1066, § 136.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-1,129 University of Nebraska Eppley Science Hall Construction Fund; legislative intent.**

It is the intent of the Legislature that four hundred seventy-five thousand dollars be appropriated from the University of Nebraska Eppley Science Hall Construction Fund for fiscal year 1991-92, for the University of Nebraska Eppley Science Hall construction project, which project shall include the addition of five floors in the existing Eppley Science Hall to expand research and related activities at the University of Nebraska Medical Center.

**Source:** Laws 1990, LB 1220, § 4.

**85-1,130 University of Nebraska Medical Center; primary care practitioners and other practitioners; develop plan.**

It is the intent of the Legislature that the University of Nebraska Medical Center develop a plan to increase the number of graduates of the center who specialize in primary care fields, who take residencies in primary care fields, and who establish practices in rural areas and other medically underserved areas of the state. The plan shall include a listing of the barriers that need to be addressed and the resources needed and should also address methodologies to provide adequate numbers of graduates in the fields of physical therapy, nursing, physician assistant practice, occupational therapy, and other health care professions in the rural areas and in other medically underserved areas of the state. The plan shall be submitted to the Legislature not later than November 1, 1993.

**Source:** Laws 1993, LB 505, § 10.

**85-1,131 Legislative findings.**

The Legislature finds and declares that:

(1) Scandals are rampant throughout college football as evidenced by schools placed on probation by the National Collegiate Athletic Association, coaches dismissed or forced to resign for improprieties, and players being declared ineligible to compete for violating rules against receiving fair financial compensation;

(2) Many players are recruited from impoverished families and the rules of the National Collegiate Athletic Association prohibiting reasonable financial compensation render such players vulnerable to inducements, benefits, and other types of compensation which are defined as illicit by the National Collegiate Athletic Association rules;

(3) A fair rate of financial compensation would give players a choice when offered illicit inducements, compensation, or assistance;

(4) Rules of the National Collegiate Athletic Association prohibiting compensation are unduly restrictive and unreasonable, promote unfairness, encourage dishonesty in recruiting and retaining players, and would not be tolerated if applied to all students; and

(5) Players at United States service academies are compensated while in attendance and are eligible to compete against schools which are members of the National Collegiate Athletic Association.

**Source:** Laws 2003, LB 688, § 1.

**Note:** For the operative date for this section, see section 85-1,136.

**85-1,132 Findings and declarations.**

The Legislature further finds and declares that:

(1) The University of Nebraska-Lincoln participates in a national intercollegiate football program which produces millions of dollars through ticket sales, lucrative national television and other electronic broadcast contracts, and participation in postseason bowl games;

(2) The football program promotes the university and generates valuable intangible benefits such as enhancement of image;

(3) The exertion of players and the revenue they generate produce employment and salaries for many others, subsidize other sports programs at the university, and underwrite travel expenses of numerous university officials, staff, and others who attend postseason bowl games in which the team participates;

(4) The university employs a large athletic department to administer its intercollegiate athletic program and a sizable football coaching staff charged primarily with the responsibility of producing a team capable of competing successfully against the best teams in their conference and in the nation and of generating as much revenue as possible;

(5) Maintaining a winning football team has become an integral aspect of the overall business or occupation of the university as an institution;

(6) The football program of the university could not exist without the athletes who play that arduous and dangerous game;

(7) Such athletes do not appear at the university by accident or happenstance but are actively recruited by university personnel at considerable expense;

(8) Such athletes are not recruited nor are scholarships awarded on the basis of need or academic achievement but for athletic prowess, the recipients having been recruited to be football players and not scholars;

(9) Many players spend more time on football-related activities than academics; and

(10) Because a sound academic program for football players may be difficult to develop due to the demands of the sport, football players are entitled to some tangible return for the strenuous work they perform and the revenue they generate for the benefit of the university.

**Source:** Laws 2003, LB 688, § 2.

**Note:** For the operative date for this section, see section 85-1,136.

#### **85-1,133 Football players; compensation.**

The Legislature further finds and declares that, in the same manner that nonathlete students are compensated for performing various tasks while a student, football players shall be entitled to fair financial compensation for playing football.

**Source:** Laws 2003, LB 688, § 3.

**Note:** For the operative date for this section, see section 85-1,136.

#### **85-1,134 Stipends authorized.**

Any person who competes in the sport of football for the University of Nebraska-Lincoln may be granted a stipend, the amount of which shall be determined by the university. In addition, the university may in its discretion grant a stipend to persons who compete in sports other than football which participate in Big Twelve Conference competition.

**Source:** Laws 2003, LB 688, § 4.

**Note:** For the operative date for this section, see section 85-1,136.

#### **85-1,135 Construction of sections.**

§ 85-1,135 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Nothing in sections 85-1,131 to 85-1,137 shall be construed to make a person a professional athlete.

**Source:** Laws 2003, LB 688, § 5.

**Note:** For the operative date for this section, see section 85-1,136.

**85-1,136 Sections; when operative.**

Sections 85-1,131 to 85-1,137 shall become operative whenever laws granting a similar stipend or similarly restricting hours of participation are enacted in at least four other states which have teams that compete in the Big Twelve Conference or its successor.

**Source:** Laws 2003, LB 688, § 6.

**85-1,137 Alternative to stipend; requirement.**

As a preferable alternative to the requirement of section 85-1,134, the University of Nebraska-Lincoln may limit the number of hours required to participate in intercollegiate athletics to such number that participation in a sport would not impede the student athlete's ability to carry a regular academic workload which will allow such student athlete to graduate in four years, will allow the student athlete adequate time to participate in the intellectual and cultural activities on campus, and further will allow the student athlete to work an average of at least twelve hours per week during the academic school year.

**Source:** Laws 2003, LB 688, § 7.

**Note:** For the operative date for this section, see section 85-1,136.

**85-1,138 Act, how cited.**

Sections 85-1,138 to 85-1,142 shall be known and may be cited as the Autism Treatment Program Act.

**Source:** Laws 2007, LB482, § 1.

**85-1,139 Purposes of act.**

The purposes of the Autism Treatment Program Act are to (1) create the Autism Treatment Program administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center and (2) provide for the development of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

**Source:** Laws 2007, LB482, § 2.

**85-1,140 Autism Treatment Program; created; administration; funding.**

The Autism Treatment Program is created. The program shall be administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center. The program shall provide or coordinate the provision of statewide intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. The program shall utilize private funds and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the

Nebraska Health Care Cash Fund. Transfers from the Nebraska Health Care Cash Fund under this section and section 71-7611 shall be utilized as the state match for the waiver established under section 85-1,142 upon the approval of such waiver.

**Source:** Laws 2007, LB482, § 3.

**85-1,141 Autism Treatment Program Cash Fund; created; use; investment.**

The Autism Treatment Program Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Cash Fund and revenue received from gifts, grants, bequests, donations, or other contributions from public or private sources. The Autism Treatment Program Cash Fund shall be administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center for purposes of the Autism Treatment Program created in section 85-1,140. Any money in the 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.

**Source:** Laws 2007, LB482, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-1,142 Department of Health and Human Services; apply for medical assistance program waiver or amendment; legislative intent.**

(1) The Department of Health and Human Services shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than July 1, 2008.

**Source:** Laws 2007, LB482, § 5.

**ARTICLE 2**

**RESEARCH FACILITIES**

Section	
85-201.	Research and extension center west of 100th meridian; purpose; management.
85-202.	Research and extension center west of 100th meridian; object.

**§ 85-201 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

- Section  
85-203. Repealed. Laws 1951, c. 346, § 3.  
85-204. Repealed. Laws 1951, c. 346, § 3.  
85-205. Repealed. Laws 1951, c. 346, § 3.  
85-205.01. Repealed. Laws 1961, c. 284, § 1.  
85-205.02. Repealed. Laws 1961, c. 284, § 1.  
85-206. Research and extension center west of 102nd meridian; purpose; management.  
85-207. Research and extension center west of 102nd meridian; object.  
85-208. Research and extension center west of 102nd meridian; federal cooperation.  
85-209. Agricultural laboratory in Box Butte County; purpose; management.  
85-210. Agricultural laboratory in Box Butte County; object.  
85-211. Agricultural laboratory in Box Butte County; conveyance of land; restriction.  
85-212. Substation in Box Butte County; expenditures.  
85-213. Experiment stations; expenditures; powers of Board of Regents.  
85-214. Research and extension centers and agricultural laboratory; control; employees; compensation.  
85-215. Research and extension centers and agricultural laboratory; income; use.  
85-216. Testing centers; Board of Regents; control; distribution.  
85-217. Testing centers; equipment; employees; salaries; regulations.  
85-218. Testing centers; general purposes.  
85-219. Testing centers; year-to-year leases from farm owners; area; crops to be planted; renewal lease.  
85-220. Board of Regents; authority to expend money.  
85-221. Repealed. Laws 1959, c. 264, § 1.  
85-222. Repealed. Laws 1959, c. 264, § 1.

**85-201 Research and extension center west of 100th meridian; purpose; management.**

For the furtherance and promotion of agricultural, horticultural, and forestry interests of this state, a research and extension center shall be established west of the one hundredth meridian in Nebraska, which center shall be under the control and management of the Board of Regents of the University of Nebraska.

**Source:** Laws 1903, c. 114, § 1, p. 591; R.S.1913, § 7135; C.S.1922, § 6785; C.S.1929, § 85-201; R.S.1943, § 85-201; Laws 1991, LB 663, § 74.

Experiment stations are a component part of the College of Agriculture of the University of Nebraska. State ex rel. Bushee v. Whitmore, 86 Neb. 399, 125 N.W. 606 (1910), modifying 85 Neb. 566, 123 N.W. 1051 (1909).

**85-202 Research and extension center west of 100th meridian; object.**

The object of the research and extension center referred to in section 85-201 shall be to determine the adaptability of the arid and semiarid portions of Nebraska to agriculture, horticulture, and forest-tree growing, such as the producing of grain, grasses, root crops, and fruits of kinds commonly grown in the same latitude in other states, and the most economical methods of producing such crops without irrigation.

**Source:** Laws 1903, c. 114, § 4, p. 591; R.S.1913, § 7137; C.S.1922, § 6787; C.S.1929, § 85-203; R.S.1943, § 85-202; Laws 1991, LB 663, § 75.

**85-203 Repealed. Laws 1951, c. 346, § 3.**

**85-204 Repealed. Laws 1951, c. 346, § 3.**

**85-205 Repealed. Laws 1951, c. 346, § 3.**

**85-205.01 Repealed. Laws 1961, c. 284, § 1.**

**85-205.02 Repealed. Laws 1961, c. 284, § 1.**

**85-206 Research and extension center west of 102nd meridian; purpose; management.**

For the furtherance and promotion of agricultural, horticultural, and forestry interests of this state, a research and extension center shall be established west of the one hundred second meridian in Nebraska, which center shall be under the control and management of the Board of Regents of the University of Nebraska.

**Source:** Laws 1909, c. 144, § 1, p. 502; R.S.1913, § 7138; C.S.1922, § 6788; C.S.1929, § 85-204; R.S.1943, § 85-206; Laws 1991, LB 663, § 76.

**85-207 Research and extension center west of 102nd meridian; object.**

The object of the research and extension center referred to in section 85-206 shall be to determine the adaptability of the arid and semiarid portions of Nebraska to agriculture, horticulture, and forestry, such as the producing of grain, grasses, root crops, and fruits of kinds commonly grown in the same latitude in other states, and the most economical methods of producing such crops with and without irrigation.

**Source:** Laws 1909, c. 144, § 4, p. 503; R.S.1913, § 7140; C.S.1922, § 6790; C.S.1929, § 85-206; R.S.1943, § 85-207; Laws 1991, LB 663, § 77.

**85-208 Research and extension center west of 102nd meridian; federal cooperation.**

The Board of Regents is hereby authorized and empowered to take such steps in conjunction with the authorities of the United States as it deems necessary to successfully establish the research and extension center mentioned in section 85-206.

**Source:** Laws 1909, c. 144, § 2, p. 503; R.S.1913, § 7139; C.S.1922, § 6789; C.S.1929, § 85-205; R.S.1943, § 85-208; Laws 1991, LB 663, § 78.

**85-209 Agricultural laboratory in Box Butte County; purpose; management.**

For the furtherance and promotion of agricultural interests of this state, an agricultural laboratory shall be established on land provided for this purpose by the citizens of Box Butte County near the city of Alliance, Box Butte County, Nebraska, which laboratory shall be under the control and management of the Board of Regents of the University of Nebraska.

**Source:** Laws 1929, c. 15, § 1, p. 95; C.S.1929, § 85-213; R.S.1943, § 85-209; Laws 1991, LB 663, § 79.

**85-210 Agricultural laboratory in Box Butte County; object.**

§ 85-210 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

The object of the agricultural laboratory referred to in section 85-209 shall be to advance the agricultural, horticultural, and irrigation interests of the State of Nebraska and specifically those agricultural problems particular to western Nebraska.

**Source:** Laws 1929, c. 15, § 3, p. 96; C.S.1929, § 85-215; R.S.1943, § 85-210; Laws 1967, c. 624, § 1, p. 2088; Laws 1991, LB 663, § 80.

**85-211 Agricultural laboratory in Box Butte County; conveyance of land; restriction.**

The county of Box Butte is authorized to deed and convey to the Board of Regents of the University of Nebraska the southeast quarter and the north half of section seventeen, township twenty-five north, range forty-eight, west of the sixth principal meridian, Box Butte County, Nebraska, to be used as an agricultural laboratory, except that when such land is not used as an agricultural laboratory by the University of Nebraska, such land shall revert to Box Butte County, Nebraska. The deed shall be executed by the members of the county board of Box Butte County, Nebraska.

**Source:** Laws 1929, c. 15, § 6, p. 96; C.S.1929, § 85-218; R.S.1943, § 85-211; Laws 1967, c. 625, § 1, p. 2089; Laws 1991, LB 663, § 81.

**85-212 Substation in Box Butte County; expenditures.**

The Director of Administrative Services is authorized and directed to draw his warrants on the General Fund of the State of Nebraska, upon presentation to him by the Board of Regents of the University of Nebraska of certified vouchers, in an amount not to exceed the sum appropriated, and the State Treasurer is hereby directed to pay the same.

**Source:** Laws 1929, c. 15, § 7, p. 97; C.S.1929, § 85-219.

**85-213 Experiment stations; expenditures; powers of Board of Regents.**

To enable the Board of Regents to carry out the provisions of sections 85-201 to 85-215, it is hereby authorized to expend such amounts as it may deem necessary from any money hereafter appropriated for each station, to carry out the spirit and intent of said sections, either by the State of Nebraska or the United States, as the case might be.

**Source:** Laws 1903, c. 114, § 6, p. 592; Laws 1909, c. 143, § 6, p. 502; Laws 1909, c. 144, § 6, p. 503; R.S.1913, § 7144; C.S.1922, § 6794; Laws 1929, c. 15, § 5, p. 96; C.S.1929, § 85-210.

**85-214 Research and extension centers and agricultural laboratory; control; employees; compensation.**

The Board of Regents shall have control and supervision of the research and extension centers and agricultural laboratory established by sections 85-201, 85-206, and 85-209 and shall appoint skillful superintendents and such other employees as to it appears necessary to obtain the best results. The board shall

fix the salaries and compensation of employees and establish such rules and regulations as it may from time to time deem best.

**Source:** Laws 1903, c. 114, § 3, p. 591; Laws 1909, c. 143, § 3, p. 501; Laws 1909, c. 144, § 3, p. 503; R.S.1913, § 7145; C.S.1922, § 6795; Laws 1929, c. 15, § 2, p. 96; C.S.1929, § 85-211; R.S.1943, § 85-214; Laws 1959, c. 461, § 1, p. 1529; Laws 1991, LB 663, § 82.

**85-215 Research and extension centers and agricultural laboratory; income; use.**

The proceeds arising from the sale of products of the various research and extension centers and agricultural laboratory provided for in sections 85-201, 85-206, and 85-209 shall be applied to the liquidation of the running expenses of the research and extension centers and agricultural laboratory from which they are sold, and all money so accruing shall be credited as coming from the state and be applied as a part or whole payment of any amount which may be appropriated from the funds of the state for the maintenance of such research and extension centers and agricultural laboratory.

**Source:** Laws 1903, c. 114, § 5, p. 591; Laws 1909, c. 143, § 5, p. 502; Laws 1909, c. 144, § 5, p. 503; R.S.1913, § 7146; C.S.1922, § 6796; Laws 1929, c. 15, § 4, p. 96; C.S.1929, § 85-212; R.S.1943, § 85-215; Laws 1959, c. 461, § 2, p. 1529; Laws 1991, LB 663, § 83.

**85-216 Testing centers; Board of Regents; control; distribution.**

For the promotion and furtherance of the agricultural interests in the different areas of this state, experimental testing centers may be established for the purpose of carrying out a crops-and-soil testing program. Such testing centers shall be under the control and management of the Board of Regents of the University of Nebraska and shall be distributed throughout the state in order to determine the effect that variation in soils, rainfall, temperature, growing season, altitude and other factors have in the production of crops in all portions of the state.

**Source:** Laws 1943, c. 5, § 1, p. 60.

**85-217 Testing centers; equipment; employees; salaries; regulations.**

The Board of Regents of the University of Nebraska, through the Director of the Agricultural Experimental Station, shall have control and supervision of such testing centers and shall appoint such employees and purchase such equipment as shall appear to it to be necessary to obtain the best results. The board shall fix the salaries and compensation of employees, and establish such rules and regulations as it may, from time to time, deem necessary.

**Source:** Laws 1943, c. 5, § 2, p. 60.

**85-218 Testing centers; general purposes.**

The object of such experimental testing stations shall be to study and demonstrate, both without and under irrigation, cropping systems suitable to the area, fertilization practices, methods of water distribution, the production

§ 85-218 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

of new crops, crop variety tests and such other matters as may be deemed best to develop the agricultural interests of the state.

**Source:** Laws 1943, c. 5, § 3, p. 60.

**85-219 Testing centers; year-to-year leases from farm owners; area; crops to be planted; renewal lease.**

The Board of Regents of the University of Nebraska is authorized to enter into agreements with the owners of farms in this state for the leasing of testing centers. The farms chosen shall each be typical of the area selected as a location for such a testing center. The total area of each of such testing centers shall not be more than is adequate and necessary to best carry out the interest and purpose of sections 85-216 to 85-220. Upon such testing centers there shall be planted, cultivated and harvested, under the supervision and direction of the Department of Agronomy of the University of Nebraska, such crops as will, through experimentation, develop and demonstrate the best crops to be grown in such area and the best farm practices for use in connection therewith. Such agreements for the leasing of testing centers may provide for the performance of such work by the farm owner, in connection therewith, as may be deemed essential. They shall be entered into upon a year-to-year basis and contain a provision for renewal at the option of the Board of Regents.

**Source:** Laws 1943, c. 5, § 4, p. 60.

**85-220 Board of Regents; authority to expend money.**

To enable the Board of Regents to carry out the provisions of sections 85-216 to 85-219, it is hereby authorized to expend such amount of money as it deems necessary from any money hereafter appropriated to carry out the spirit and intent of said sections.

**Source:** Laws 1943, c. 5, § 5, p. 61.

**85-221 Repealed. Laws 1959, c. 264, § 1.**

**85-222 Repealed. Laws 1959, c. 264, § 1.**

**ARTICLE 3  
STATE COLLEGES**

**Cross References**

**Constitutional provisions:**

Governing board:

Appointment, confirmation, terms, no compensation, see Article VII, section 13, Constitution of Nebraska.

Commissioner of Education, member ex officio, see Article VII, section 13, Constitution of Nebraska.

**High school equivalency diploma**, acceptance, see section 79-733.

**Retirement annuity contracts**, authority to purchase, see section 85-606.01.

**State Department of Education**, loans to needy students, source, limitations, see section 79-2,106.

**Section**

- 85-301. State colleges; official names; board of trustees; appointment; traveling expenses.
- 85-302. Board of trustees; officers; body corporate; audit.
- 85-303. Board of trustees; secretary; duties; annual report.
- 85-304. Board of trustees; powers, enumerated.
- 85-304.01. Nebraska State Colleges; new capital construction; appropriation; percentage used for works of art; when.
- 85-304.02. Board of Trustees; works of art; duties.

- Section
- 85-304.03. Board of Trustees; insure compliance with sections; manner.
- 85-305. Board of trustees; meetings.
- 85-306. State colleges; president; duties.
- 85-307. State colleges; president; collection of fees.
- 85-308. State colleges; purpose; courses.
- 85-308.01. State colleges; degree of bachelor of arts or bachelor of science; confer.
- 85-309. Repealed. Laws 1963, c. 491, § 13.
- 85-310. State colleges; students; admission.
- 85-311. State colleges; matriculation fee; institutional cash fund.
- 85-312. State colleges; morals of the pupils; faculty; religious test forbidden.
- 85-313. Repealed. Laws 1963, c. 491, § 13.
- 85-314. Board of trustees; rules and regulations.
- 85-315. Board of trustees; utilities service; sale or lease.
- 85-316. State colleges; funds; contingencies; disbursements; travel expense.
- 85-317. State colleges; endowment fund; source; investment.
- 85-317.01. State colleges; endowments and gifts; acceptance.
- 85-318. State colleges; dormitory funds; use.
- 85-319. Eminent domain; powers of board of trustees; procedure.
- 85-320. State colleges; retirement plan; establishment; terms; investment of funds.
- 85-321. Repealed. Laws 1987, LB 31, § 6.
- 85-322. State College Buildings Renovation and Land Acquisition Fund; created; authorized uses.
- 85-323. Building renovation and land acquisition projects; board of trustees; powers.
- 85-324. State College Facilities Improvement Fund; created; authorized uses.
- 85-325. Construction projects; board of trustees; powers.
- 85-326. State College Facility Fund; created; authorized uses.
- 85-327. Wayne State College construction project; board of trustees; powers.
- 85-328. State College Facility Fee Fund; created; use; investment.

**85-301 State colleges; official names; board of trustees; appointment; traveling expenses.**

The existing institutions known as the state colleges located at Chadron, Peru, and Wayne shall hereafter be known and designated as Chadron State College, Peru State College, and Wayne State College, respectively. The general government thereof shall be vested, under the direction of the Legislature, in a board of seven members, to be known as the Board of Trustees of the Nebraska State Colleges, six of whom shall be appointed by the Governor, with the advice and consent of the Legislature, two each for terms of two, four, and six years and two each biennium thereafter for terms of six years, and the Commissioner of Education shall be a member ex officio. The duties and powers of the board shall be prescribed by law, and the members thereof shall receive no compensation for the performance of their duties but may be reimbursed their actual expenses incurred therein, except that members of the Board of Trustees of the Nebraska State Colleges shall not be entitled to reimbursement for mileage or other traveling expense as part of their actual expenses except on the basis provided for in sections 81-1174 to 81-1177.

**Source:** Laws 1881, c. 78, sub. XIII, § 1, p. 372; R.S.1913, § 7057; Laws 1921, c. 67, § 1, p. 257; C.S.1922, § 6692; C.S.1929, § 85-301; Laws 1933, c. 96, § 25, p. 402; Laws 1941, c. 180, § 13, p. 708; C.S.Supp.,1941, § 85-301; R.S.1943, § 85-301; Laws 1949, c. 315, § 1, p. 1035; Laws 1963, c. 542, § 1, p. 1689; Laws 1969, c. 852, § 2, p. 3200; Laws 1988, LB 864, § 69; Laws 1989, LB 247, § 22.

**§ 85-301 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

Terms of office are established for members of board. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

**85-302 Board of trustees; officers; body corporate; audit.**

The members of the Board of Trustees of the Nebraska State Colleges shall annually elect a president and vice president from among their own number. The board shall constitute a body corporate to be known as the Board of Trustees of the Nebraska State Colleges, and as such may sue and be sued, and may make and use a common seal and alter the same at its pleasure. The board shall also select a secretary. The State Treasurer shall be treasurer of the board by virtue of his or her office. A complete and comprehensive annual audit shall be made of the books, accounts, funds, records, and affairs of the board and each of the state colleges.

**Source:** Laws 1881, c. 78, sub. XIII, § 2, p. 373; R.S.1913, § 7058; C.S.1922, § 6693; C.S.1929, § 85-302; Laws 1943, c. 229, § 1, p. 776; R.S.1943, § 85-302; Laws 1969, c. 852, § 3, p. 3200; Laws 1969, c. 845, § 2, p. 3184; Laws 1973, LB 130, § 1; Laws 2005, LB 426, § 21.

**85-303 Board of trustees; secretary; duties; annual report.**

It shall be the duty of the secretary to keep an exact and detailed account of the doings of the board, and on January 1 of each year he shall transmit to the Governor a report of all expenditures made during the preceding year.

**Source:** Laws 1881, c. 78, sub. XIII, § 3, p. 373; R.S.1913, § 7059; C.S.1922, § 6694; C.S.1929, § 85-303; R.S.1943, § 85-303; Laws 1973, LB 130, § 2.

Secretary of state normal school board is allowed a salary, though it is not provided for in act. State ex rel. Ludden v. Barton, 88 Neb. 576, 130 N.W. 260 (1911).

**85-304 Board of trustees; powers, enumerated.**

The board shall have the power:

- (1) To appoint a president and such other persons as may be required for each school;
- (2) To fix their compensation and prescribe their duties;
- (3) To remove all persons appointed, but the affirmative votes of four members of the board shall be necessary to remove a president or an assistant during the time for which such persons were appointed;
- (4) Through an extension division to provide for holding of classes at various localities throughout the state, avoiding unnecessary duplication of courses offered by other educational institutions in such localities;
- (5) To acquire real and personal property and dispose of the same whenever any of the state colleges will be benefited thereby, but no grounds upon which any buildings of any of the state colleges are located shall be disposed of without the consent of the Legislature;
- (6) To pay expenses for recruitment of academic, administrative, professional, and managerial personnel; and

(7) To provide benefits for all present and future employees, including group life insurance, group hospital-medical insurance, and group long-term disability income insurance; and

(8) Shall have the duty to institute a continuing program of preventive maintenance and a program of deferred maintenance consistent with the provisions of sections 81-173 to 81-190; and

(9) Shall have the duty to consult with the Nebraska Arts Council and acquire works of art for the original construction of any public building under its supervision consistent with sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

**Source:** Laws 1881, c. 78, sub. XIII, § 4, p. 373; R.S.1913, § 7060; C.S.1922, § 6695; C.S.1929, § 85-304; Laws 1937, c. 212, § 1, p. 849; C.S.Supp.,1941, § 85-304; R.S.1943, § 85-304; Laws 1959, c. 462, § 1, p. 1530; Laws 1963, c. 542, § 2, p. 1690; Laws 1969, c. 852, § 4, p. 3201; Laws 1973, LB 248, § 3; Laws 1973, LB 423, § 2; Laws 1977, LB 309, § 21; Laws 1978, LB 664, § 13.

Where teacher was dismissed by letter from president of state normal school, quo warranto was a proper remedy to test whether dismissal was Effective. Eason v. Majors, 111 Neb. 288, 196 N.W. 133 (1923).

Upon showing that college administrative body acted from honest conviction upon belief facts showed it was for best

interests of the school, and there was no showing that act was arbitrary or generated by ill will, fraud, coercion, or other such motives, court will not interfere. Levitt v. Board of Trustees of Nebraska State Colleges, 376 F.Supp. 945 (D. Neb. 1974).

**85-304.01 Nebraska State Colleges; new capital construction; appropriation; percentage used for works of art; when.**

After January 1, 1979, at least one percent of any appropriation for the original construction of any public building under the supervision of the Board of Trustees of the Nebraska State Colleges shall be spent for the acquisition of works of art. The works of art may be an integral part of the structure, attached to the structure, detached within or outside of the structure, or may be exhibited by the Board of Trustees of the Nebraska State Colleges in other public facilities.

**Source:** Laws 1978, LB 664, § 14.

**85-304.02 Board of Trustees; works of art; duties.**

The Board of Trustees of the Nebraska State Colleges, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchases of art for each project under its supervision. The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Trustees of the Nebraska State Colleges in consultation with the Nebraska Arts Council.

**Source:** Laws 1978, LB 664, § 15.

**85-304.03 Board of Trustees; insure compliance with sections; manner.**

The Board of Trustees of the Nebraska State Colleges shall inform the Director of Administrative Services that sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 have been complied with for projects under its supervision before a warrant may be issued for payment.

**Source:** Laws 1978, LB 664, § 16.

**85-305 Board of trustees; meetings.**

The board shall hold each year a regular meeting at or near the close of each semester, and such special meetings as may be found necessary.

**Source:** Laws 1881, c. 78, sub. XIII, § 6, p. 374; R.S.1913, § 7062; C.S.1922, § 6697; C.S.1929, § 85-306.

**85-306 State colleges; president; duties.**

The president of each school shall be the chief executive officer thereof and shall be responsible to the board for the control and management of the same. All teachers and other subordinates in each state college shall be under the direction of the president thereof, subject to the general regulations of the board.

**Source:** Laws 1881, c. 78, sub. XIII, § 8, p. 374; R.S.1913, § 7065; C.S.1922, § 6700; C.S.1929, § 85-309; Laws 1937, c. 212, § 2, p. 849; C.S.Supp.,1941, § 85-309; R.S.1943, § 85-306; Laws 1969, c. 852, § 5, p. 3201.

**85-307 State colleges; president; collection of fees.**

The president of each state college shall receive and collect the fees for matriculation, board, room and such other fees as may be payable at such school, and shall disburse the same under direction of the board and according to law.

**Source:** Laws 1937, c. 212, § 3, p. 850; C.S.Supp.,1941, § 85-320; R.S.1943, § 85-307; Laws 1967, c. 36, § 9, p. 165; Laws 1969, c. 852, § 6, p. 3201.

**85-308 State colleges; purpose; courses.**

The purpose of the state colleges is the training and instruction of persons, both male and female, in the arts of teaching and managing schools, the principles and practice of the various branches of learning taught in our public schools, and the arts and sciences generally. The Board of Trustees of the Nebraska State Colleges shall have power to prescribe, for the state colleges, such courses of instruction as will best fit such persons for teaching and managing the public schools, and their instruction in the arts and sciences generally as provided in sections 79-741, 79-744, 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1881, c. 78, sub. XIII, § 15, p. 376; R.S.1913, § 7072; Laws 1921, c. 65, § 1, p. 252; C.S.1922, § 6707; C.S.1929, § 85-316; Laws 1937, c. 212, § 5, p. 850; C.S.Supp.,1941, § 85-316; R.S.1943, § 85-308; Laws 1949, c. 315, § 2(1), p. 1035; Laws 1969, c. 852, § 7, p. 3202; Laws 1978, LB 756, § 55; Laws 1996, LB 900, § 1078.

**85-308.01 State colleges; degree of bachelor of arts or bachelor of science; confer.**

The board shall have power, on the recommendation of the faculty of the respective college, to confer, upon completion of a four-year course in liberal

arts prescribed by such board, a degree of bachelor of arts or bachelor of science.

**Source:** Laws 1949, c. 315, § 2(2), p. 1036; Laws 1965, c. 579, § 1, p. 1870.

**85-309 Repealed. Laws 1963, c. 491, § 13.**

**85-310 State colleges; students; admission.**

The board shall make such rules and regulations for the admission of students to the state colleges as may seem to be best for the interest of the state colleges and not inconsistent with the purpose for which they have been established.

**Source:** Laws 1881, c. 78, sub. XIII, § 16, p. 376; Laws 1907, c. 127, § 1, p. 423; Laws 1911, c. 121, § 1, p. 423; R.S.1913, § 7073; C.S.1922, § 6708; C.S.1929, § 85-317; Laws 1937, c. 212, § 6, p. 850; C.S.Supp.,1941, § 85-317; R.S.1943, § 85-310; Laws 1969, c. 852, § 8, p. 3202.

Board cannot arbitrarily refuse admission to or continuance in normal school. Jackson v. State ex rel. Majors, 57 Neb. 183, 77 N.W. 662 (1898).

**85-311 State colleges; matriculation fee; institutional cash fund.**

Students, when entering any state teachers college for the first time, shall pay a matriculation fee of five dollars. The money thus received shall be paid into the hands of the State Treasurer, and shall be held and disbursed as an institutional cash fund for the college wherein the students shall matriculate.

**Source:** Laws 1881, c. 78, sub. XIII, § 13, p. 376; R.S.1913, § 7070; C.S.1922, § 6705; C.S.1929, § 85-314; R.S.1943, § 85-311; Laws 1949, c. 315, § 3, p. 1036; Laws 1959, c. 463, § 1, p. 1531.

**85-312 State colleges; morals of the pupils; faculty; religious test forbidden.**

The board in its regulations, and the president in his supervision and government of the state colleges, shall exercise a watchful guardianship over the morals of the pupils, but no religious or sectarian test shall be applied in the selection of teachers, and none shall be adopted in the state colleges.

**Source:** Laws 1881, c. 78, sub. XIII, § 9, p. 374; R.S.1913, § 7066; C.S.1922, § 6701; C.S.1929, § 85-310; Laws 1937, c. 212, § 4, p. 850; C.S.Supp.,1941, § 85-310; R.S.1943, § 85-312; Laws 1969, c. 852, § 9, p. 3202.

**85-313 Repealed. Laws 1963, c. 491, § 13.**

**85-314 Board of trustees; rules and regulations.**

The board shall adopt all needful rules and regulations for the careful preservation of the buildings, furniture, apparatus, grounds, timber, shrubbery, and other property belonging to the state college.

**Source:** Laws 1881, c. 78, sub. XIII, § 7, p. 374; R.S.1913, § 7063; C.S.1922, § 6698; C.S.1929, § 85-307; R.S.1943, § 85-314; Laws 1969, c. 852, § 10, p. 3202.

**85-315 Board of trustees; utilities service; sale or lease.**

The board of trustees is hereby empowered and authorized to make such contract of sale or lease of the whole or part of any water, light or heat plant now or hereafter constructed at any state college, and the purchase of water, heat and light, with any city, village or corporation at or near which is located any state college, as shall in the judgment of the board be to the best interest of said state college.

**Source:** Laws 1913, c. 194, § 1, p. 572; R.S.1913, § 7064; C.S.1922, § 6699; C.S.1929, § 85-308; R.S.1943, § 85-315; Laws 1969, c. 852, § 11, p. 3202.

**85-316 State colleges; funds; contingencies; disbursements; travel expense.**

All funds appropriated for the use and benefit of the state colleges together with the income arising from the lease and sale of endowment lands belonging to such colleges shall be under the direction and control of the board of trustees, subject to the provisions contained in this section, except that each college may retain in its possession a sum not to exceed fifty thousand dollars out of which to make settlement and equitable adjustments with students entitled thereto, to make payments for day-to-day operations calling for immediate payment, and to provide for contingencies. The State Treasurer shall pay out of the proper funds all warrants for money to be expended under sections 85-301 to 85-318, such warrants to be drawn by the Director of Administrative Services on certificates by the president of the state college. All requests for payment or reimbursement for mileage or other traveling expense shall be audited and allowed on the basis of the provisions set forth in sections 81-1174 to 81-1177. No expenditure for traveling expenses to other states shall be authorized by the board for any college employee unless approval for such trip is first granted by the president or his or her designee. The request shall be submitted to the president of such state college or his or her designee and approved in writing by him or her.

**Source:** Laws 1881, c. 78, sub. XIII, § 11, p. 375; R.S.1913, § 7068; C.S.1922, § 6703; C.S.1929, § 85-312; Laws 1933, c. 96, § 26, p. 402; Laws 1941, c. 180, § 14, p. 709; C.S.Supp.,1941, § 85-312; R.S.1943, § 85-316; Laws 1951, c. 347, § 1, p. 1136; Laws 1957, c. 399, § 1, p. 1366; Laws 1963, c. 542, § 3, p. 1690; Laws 1965, c. 580, § 1, p. 1871; Laws 1969, c. 852, § 12, p. 3203; Laws 1986, LB 912, § 1; Laws 1988, LB 864, § 70; Laws 1989, LB 398, § 1; Laws 2005, LB 426, § 22.

**85-317 State colleges; endowment fund; source; investment.**

All the lands remaining unsold of the twenty sections appropriated as an endowment fund for the state colleges and all the endowment fund derived from the sale of such lands are hereby confirmed as such endowment, to be forever used for this purpose. All such money derived from federal grants shall be invested in the manner provided by law for the investment of the permanent school fund of the state, in the same kind of securities and by the same officers charged with that duty pursuant to section 72-202 as may from time to time be amended by the Legislature.

**Source:** Laws 1881, c. 78, sub. XIII, § 12, p. 375; R.S.1913, § 7069; C.S.1922, § 6704; C.S.1929, § 85-315; R.S.1943, § 85-317; Laws 1947, c. 354, § 1(1), p. 1105; Laws 1969, c. 852, § 13, p. 3203; Laws 1983, LB 238, § 3.

**85-317.01 State colleges; endowments and gifts; acceptance.**

The Board of Trustees of the Nebraska State Colleges is authorized to receive, upon behalf of any of such state colleges and upon such terms and conditions as may be imposed, such gifts and endowments as the board may decide to accept. Such board shall be trustees of any such gifts and endowments.

**Source:** Laws 1947, c. 354, § 1(2), p. 1105; Laws 1969, c. 852, § 14, p. 3204.

**85-318 State colleges; dormitory funds; use.**

All money received for the use of rooms in the dormitories of any of the state colleges, shall be expended by the board in repairs of such dormitory and the furniture of the same, whenever such repairs are needed.

**Source:** Laws 1881, c. 78, sub. XIII, § 14, p. 376; R.S.1913, § 7071; C.S.1922, § 6706; C.S.1929, § 85-315; R.S.1943, § 85-318; Laws 1969, c. 852, § 15, p. 3204.

**85-319 Eminent domain; powers of board of trustees; procedure.**

The Board of Trustees of the Nebraska State Colleges is hereby given power and authority to acquire by condemnation lands necessary for state colleges. The procedure to condemn such property shall be exercised in the manner set forth in Chapter 76, article 7.

**Source:** Laws 1953, c. 365, § 1, p. 1144; Laws 1969, c. 852, § 16, p. 3204.

**85-320 State colleges; retirement plan; establishment; terms; investment of funds.**

The Board of Trustees of the Nebraska State Colleges shall have power, in its discretion, to provide retirement benefits for present and future employees of the board, subject to the following: (1) The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary contributions for both past service and future service being treated in the budgets in the same way as any other operating expense, (2) the state contribution under such retirement plan shall be (a) the amount established by the board before any agreement for reduction of salary or wage earnings, and (b) pursuant to an agreement for reduction of salary or wage earnings, the amount of the reduction of salary or wage earnings, (3) each employee's contribution shall be the amount established by the board and shall not be required to exceed the state's contribution under subdivision (2)(a) of this section, except that in lieu of making such contribution, each such employee may enter into an agreement for reduction of salary or wages for the purchase by the board of annuity contracts for such employee, under the provisions of the Internal Revenue Code, but the amount of the reduction of salary or wages allowable under this subdivision may not include credit for service prior to January 1, 1973, (4) continued contributions to the system shall be made until the date of retirement as provided in section 85-606, and (5) the retirement benefits of any employee for service prior to the effective date of any retirement plan established under the provisions of this section shall be those provided under the retirement plan then in force which benefits shall not be abridged. The investment for such a retirement plan shall be made by the state investment

officer, but the state investment officer shall not change the type of investment for such retirement plan without the approval of the Board of Trustees of the Nebraska State Colleges.

**Source:** Laws 1963, c. 539, § 1, p. 1685; Laws 1967, c. 621, § 2, p. 2084; Laws 1969, c. 852, § 17, p. 3204; Laws 1969, c. 849, § 4, p. 3194; Laws 1969, c. 584, § 130, p. 2430; Laws 1973, LB 423, § 3; Laws 1980, LB 817, § 3; Laws 1981, LB 463, § 3; Laws 1995, LB 574, § 90.

**85-321 Repealed. Laws 1987, LB 31, § 6.**

**85-322 State College Buildings Renovation and Land Acquisition Fund; created; authorized uses.**

(1) There is hereby created a State College Buildings Renovation and Land Acquisition Fund. All money accruing to this fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for those projects of repair, remodeling, and renovation of buildings belonging to the state colleges and for those land acquisition projects of the state colleges pursuant to this section as long as no such repair, remodeling, or renovation project specified in subsection (2) of this section provides for construction of an addition to any building, unless required by any federal law or law of this state relating to building safety or relating to building access for handicapped persons. No expenditure may be made from such fund without prior approval by a resolution of the Board of Trustees of the Nebraska State Colleges.

(2) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Buildings Renovation and Land Acquisition Fund for the following projects and associated expenses: (a) Repair, remodel, and renovate the east wing of the West Center Main Building at Kearney State College, one million one hundred three thousand one hundred four dollars; (b) repair, remodel, and renovate the Fine Arts Building at Chadron State College, nine hundred ninety thousand dollars; (c) acquire certain real property for public use by Kearney State College, three hundred seventy thousand dollars; and (d) administrative and financing costs associated with any contract which the board of trustees may enter into pursuant to this section to implement any of the projects listed in subdivisions (a) through (c) of this subsection, not to exceed eighteen thousand dollars.

(3) In addition to those building repair, remodeling, or renovation projects and land acquisition projects specifically listed in this section, the Board of Trustees of the Nebraska State Colleges is further authorized to make expenditures from the State College Buildings Renovation and Land Acquisition Fund, which shall include any investment income received from the investment of such fund, for other building repair, remodeling, or renovation project or land acquisition project which shall be specifically approved by the Legislature.

**Source:** Laws 1983, LB 410, § 6; Laws 1991, LB 693, § 1.

**85-323 Building renovation and land acquisition projects; board of trustees; powers.**

(1) In order to accomplish any projects authorized by section 85-322, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such

project of the state colleges and providing for the long-term payment of the cost of such project from the State College Buildings Renovation and Land Acquisition Fund. In no case shall any such contract for the projects specified in subsection (2) of section 85-322 run for a period longer than ten years or exceed two million four hundred eighty-one thousand one hundred four dollars. The board of trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the board of trustees.

(2) The Board of Trustees of the Nebraska State Colleges may also convey or lease and lease back all or any part of the projects authorized by section 85-322 and the land on which such projects are situated to such person, firm, or corporation as the board of trustees may contract with pursuant to this section to facilitate the long-term payment of the costs of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the board of trustees.

**Source:** Laws 1983, LB 410, § 7; Laws 1991, LB 693, § 2.

**85-324 State College Facilities Improvement Fund; created; authorized uses.**

There is hereby created the State College Facilities Improvement Fund. All money accruing to the fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for those construction projects of the state colleges authorized pursuant to this section. No expenditure may be made from such fund without prior approval by a resolution of the board of trustees.

The board of trustees may make expenditures from the State College Facilities Improvement Fund for the following projects: (1) Renovation of the T.J. Majors Education Building at Peru State College, two million twenty-five thousand dollars; and (2) renovation of, and construction of an addition to, Cushing Coliseum at Kearney State College, eight million five hundred and ninety-eight thousand ninety-eight dollars. The board of trustees may make additional expenditures for the project listed in subdivision (2) of this section in an amount not to exceed two million two hundred and ninety-five thousand dollars from private sources and non-state-aided institutional sources. The cost for each project listed in this section shall be exclusive of sums previously expended for planning and any administrative costs and financing costs associated with any contract which the board of trustees may enter into pursuant to this section and section 85-325 to implement any of the projects listed in this section.

The board of trustees may make expenditures for the purposes stated in this section from investment income balances in the State College Facilities Improvement Fund. The board of trustees may make expenditures from such fund in amounts which, in combination with interest accrued on any construction funds and reserve funds created as part of a long-term contract entered into by the board of trustees pursuant to section 85-325, are sufficient to satisfy the

financial obligations incurred in such contracts entered into by the board of trustees. Any balance existing in the State College Facilities Improvement Fund, any reserve funds, or any other funds created as part of a long-term contract entered into by the board of trustees pursuant to section 85-325 shall be transferred to the General Fund either on June 15, 1998, or when all financial obligations incurred in the contracts entered into by the board of trustees pursuant to section 85-325 are discharged, whichever occurs first.

**Source:** Laws 1987, LB 218, § 5; Laws 1988, LB 38, § 3.

**85-325 Construction projects; board of trustees; powers.**

In order to accomplish any projects authorized by section 85-324, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Improvement Fund. In no case shall any such contract run for a period longer than eleven years or exceed twelve million six hundred twenty-three thousand ninety-eight dollars exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts. The board of trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the board of trustees. The board of trustees may also convey or lease and lease back all or any part of the projects authorized by section 85-324 and the land on which such projects are situated to such person, firm, or corporation as the board of trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the board of trustees.

**Source:** Laws 1987, LB 218, § 6.

**85-326 State College Facility Fund; created; authorized uses.**

There is hereby created a State College Facility Fund. All money accruing to the fund is hereby appropriated to the Board of Trustees of the Nebraska State Colleges and shall be used exclusively for the construction project authorized in this section. No expenditures may be made from such fund without prior approval by a resolution of the Board of Trustees.

The Board of Trustees is authorized to make expenditures from the State College Facility Fund for the following project and associated expenses: Construction of a classroom and laboratory facility to house the Division of Business at Wayne State College, three million nine hundred twenty-five thousand five hundred twenty dollars. The cost limitation set forth in this section shall be exclusive of sums previously expended from other sources for planning and administrative costs, financing costs, and other costs associated with any contract which the Board of Trustees may enter into pursuant to this section and section 85-327 to implement the project listed in this section. The Board of Trustees shall record and report, on the Nebraska State Accounting

System, expenditure of amounts from the State College Facility Fund and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-327 in such manner and format as prescribed by the Department of Administrative Services.

The Board of Trustees is authorized to make expenditures for the purposes stated in this section from investment income balances in the State College Facility Fund. Any balance existing in the State College Facility Fund or in any reserve funds created as part of a long-term contract entered into by the Board of Trustees pursuant to section 85-327 shall be transferred to the General Fund either on July 15, 1997, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to section 85-327 are discharged, whichever occurs first. Any balance existing in any reserve funds created as part of a long-term contract entered into by the Board of Trustees pursuant to section 85-327 in excess of such level as may be required by such contract shall be annually transferred to the General Fund on July 15.

**Source:** Laws 1992, Third Spec. Sess., LB 9, § 5.

**85-327 Wayne State College construction project; board of trustees; powers.**

In order to accomplish the project authorized by section 85-326, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the long-term payment of the cost of such project from the State College Facility Fund. In no case shall any such contract extend for a period beyond July 15, 1997, or obligate payments beyond those which may be satisfied with funds available pursuant to sections 77-2602 and 85-326. The Board of Trustees shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriations specifically made by the Legislature for such purpose. No contract shall be entered into pursuant to this section without prior approval by a resolution of the Board of Trustees. The Board of Trustees may also convey or lease and lease back all or any part of the project authorized by section 85-326 and the land on which such project is situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such project. Any such conveyance or lease shall provide that when the cost of such project has been paid, together with interest and other costs thereon, such project and the land on which such project is located shall become the property of the Board of Trustees.

**Source:** Laws 1992, Third Spec. Sess., LB 9, § 6.

**85-328 State College Facility Fee Fund; created; use; investment.**

The State College Facility Fee Fund is created. Revenue credited to the fund shall include amounts generated through assessment of a facilities fee under authority of the Board of Trustees of the Nebraska State Colleges. Amounts accumulated in the fund are authorized to be expended for the purpose of paying the cost of capital improvement projects approved by the board of trustees for any facilities on campuses or lands owned or controlled by the board, except that no such amounts shall be expended for capital improvement projects relating to facilities from which revenue is derived and pledged for the retirement of revenue bonds issued under the provisions of sections 85-403 to

§ 85-328 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

85-411. All money accruing to the fund is appropriated to the board of trustees and shall be used for capital improvement projects authorized by the board. No expenditure may be made from the fund without prior approval by a resolution of the board of trustees. Any money in the 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. All revenue, fund balances, and expenditures shall be recorded in the Nebraska State Accounting System.

**Source:** Laws 1998, LB 1129, § 34.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 4**

**CAMPUS BUILDINGS AND FACILITIES**

- Section
- 85-401. Board of Regents; Board of Trustees; campus buildings and facilities; lease-purchase agreements authorized; conditions.
  - 85-402. Campus buildings and facilities; pledge of income and appropriations authorized; limitations.
  - 85-403. Campus buildings and facilities; construction, purchase, or repair; revenue bonds; authorized; not obligation of state or governing board; investment of proceeds.
  - 85-403.01. Legislative findings.
  - 85-403.02. Repealed. Laws 1988, LB 802, § 41.
  - 85-404. Dormitories; housing facilities; parking facilities; other facilities; revenue bonds; issuance; review by Coordinating Commission for Postsecondary Education; approval by Legislature.
  - 85-405. Campus buildings and facilities; revenue bonds; registration; place of payment.
  - 85-406. Campus buildings and facilities; revenue bonds; proceeds; use.
  - 85-407. Campus buildings and facilities; refunding bonds; authorized.
  - 85-408. Dormitories; housing facilities; other facilities; rates, fees, or charges; pledge for payment of bonds; surplus; review by Coordinating Commission for Postsecondary Education; approval by Legislature.
  - 85-409. Campus buildings and facilities; utilities; board furnish.
  - 85-410. Campus buildings and facilities; revenue bonds; issuance; public purpose; exempt from taxation.
  - 85-411. Campus buildings and facilities; board; powers.
  - 85-412. Deferred maintenance; legislative findings; sections; how construed.
  - 85-413. University of Nebraska Facilities Program; created; use.
  - 85-414. University of Nebraska Facilities Program; funding; intent; Board of Regents of the University of Nebraska; powers and duties.
  - 85-415. University of Nebraska Facilities Program; contracts authorized; limitations.
  - 85-416. State College Facilities Program; created; use.
  - 85-417. State College Facilities Program; funding; intent; Board of Trustees of the Nebraska State Colleges; powers and duties.
  - 85-418. State College Facilities Program; contracts authorized; limitations.
  - 85-419. Construction and improvement projects; legislative findings.
  - 85-420. University of Nebraska Facilities Program of 2006; created; use of appropriations.
  - 85-421. University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.
  - 85-422. Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.
  - 85-423. State College Facilities Program of 2006; created; use of appropriations.

Section	
85-424.	State College Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.
85-425.	Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.

**85-401 Board of Regents; Board of Trustees; campus buildings and facilities; lease-purchase agreements authorized; conditions.**

Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are authorized to lease to any person, firm, or corporation such portions of the campus of the respective institutions under their control as may be necessary to be used as sites for the construction of fireproof buildings for dormitories and for boarding, housing, and student activity purposes, for athletic structures, and for parking or as sites for the establishment of parking facilities, and they may acquire lands adjacent to the campus of any such institution by donation or purchase with any funds they may have available for that purpose to be leased as sites for such buildings and facilities. Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges may also lease from any person, firm, or corporation an athletic structure or structures constructed on a site or sites owned by the State of Nebraska when the person, firm, or corporation has the permission of the Legislature to construct on such site or sites.

The State of Nebraska shall incur no liability by reason of the exercise of the authority granted in this section to the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges other than is hereinafter specifically set forth. The buildings and facilities so erected or established shall be used solely for dormitories and for boarding, housing, and student activity purposes, for athletic structures, and for parking, as the case may be.

Subject to subsection (10) of section 85-1414, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are hereby authorized to contract with the owners of the buildings and facilities so erected or established on the leased grounds or state sites to pay as rental or otherwise for the use of the buildings and facilities a sum sufficient to pay, on the amortization plan, the principal and interest thereon of the cost of construction or establishment of the buildings and facilities, such contracts to run not over forty years.

The rate of interest allowed on the cost of construction or establishment shall be fixed by the Board of Regents of the University of Nebraska or Board of Trustees of the Nebraska State Colleges, payable annually or semiannually as may be determined by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges. The contract shall provide that when the cost of construction or establishment has been paid, together with interest thereon, the buildings and facilities so constructed or established shall become the property of the State of Nebraska.

**Source:** Laws 1929, c. 199, § 1, p. 687; C.S.1929, § 85-401; R.S.1943, § 85-401; Laws 1965, c. 581, § 1, p. 1872; Laws 1969, c. 852, § 18, p. 3205; Laws 1971, LB 1, § 4; Laws 1972, LB 1433, § 3; Laws 1991, LB 663, § 84; Laws 1994, LB 683, § 2.

**85-402 Campus buildings and facilities; pledge of income and appropriations authorized; limitations.**

The Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges are hereby authorized:

(1) To expend on the amortization plan any part of the rentals on any and all rooms, dormitories, dining rooms, and housing or student activity facility buildings or parking buildings or facilities constructed or established pursuant to section 85-401 and any part of the revenue of any athletic structure so constructed or established;

(2) In the case of the construction of buildings for dormitories and for boarding and housing purposes, to expend any part of the net rentals received from other buildings, theretofore constructed on the same campus for dormitories and for boarding and housing purposes, connected with the respective institutions under their control;

(3) In the case of the construction or establishment of buildings or facilities for parking, to expend any part of the net revenue received from other parking buildings and facilities, including parking registration fees, theretofore constructed or established on the same campus, connected with respective institutions under their control, in the payment of the construction or establishment charges and interest thereon; and

(4) To pledge on behalf of the respective institutions the net income from the rentals for the payment of such construction or establishment charges and interest.

In no case shall the contracts run for a longer period than forty years, and in no case is the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges authorized to pledge the credit of the State of Nebraska for the payment of any sum or sums over and above the net income derived from the use of the building or buildings or facility or facilities, except that there may be pledged for the payment of such contracts any appropriations specifically made for such purposes by the Legislature.

**Source:** Laws 1929, c. 199, § 2, p. 688; C.S.1929, § 85-402; Laws 1941, c. 192, § 1, p. 761; C.S.Supp.,1941, § 85-402; R.S.1943, § 85-402; Laws 1965, c. 561, § 2, p. 1845; Laws 1969, c. 852, § 19, p. 3206; Laws 1972, LB 1433, § 4; Laws 1991, LB 663, § 85; Laws 1994, LB 683, § 3.

**85-403 Campus buildings and facilities; construction, purchase, or repair; revenue bonds; authorized; not obligation of state or governing board; investment of proceeds.**

Supplemental to any existing law on the subject, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges, respectively, may construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip dormitories, residence halls, single-dwelling or multiple-dwelling units, or other facilities for the housing and boarding of students, single or married, faculties, or other employees of the institutions under their control, buildings and structures for athletic purposes, for student and faculty unions or centers, and for the medical care and physical development and other activities of the students of the institutions, and buildings or other facilities for parking on real estate then owned or controlled by either of

such boards or on real estate purchased, leased, or otherwise acquired for such purposes and pay the cost thereof, including such real estate, by issuing revenue bonds payable solely out of their revenue other than funds derived from taxation, except that any building or facility for parking shall be located on or adjacent to campuses controlled by such boards.

Bonds issued under the provisions of sections 85-403 to 85-411 are not an obligation of the State of Nebraska, and no tax shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall not constitute a debt of the board issuing the same and shall be paid solely out of money derived from their revenue and earnings as provided in sections 85-403 to 85-411. If any proceeds from such bonds are available for investment, such investment shall be by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1955, c. 352, § 1, p. 1075; Laws 1965, c. 581, § 3, p. 1874; Laws 1969, c. 852, § 20, p. 3207; Laws 1969, c. 584, § 131, p. 2431; Laws 1991, LB 663, § 86; Laws 1994, LB 683, § 4; Laws 1994, LB 1066, § 137.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

#### 85-403.01 Legislative findings.

The Legislature hereby finds and determines: It has been the experience of both the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges that the lack of facilities of the types authorized by section 85-403, to be constructed, purchased, or otherwise acquired, remodeled, repaired, furnished and equipped by such boards, has deterred many individuals from attending the institutions under the control of the boards or added increased burdens upon many individuals in attending such institutions. With the continuation of the trend of more high school graduates enrolling and remaining in the institutions under the control of the boards and the normal population growth of the state, the lack of such facilities may continue to deter many individuals from attending such institutions or may add additional burdens upon those who do attend. The powers granted to both boards under sections 85-401 to 85-411, and the exercise by the boards of such powers, are for educational purposes, being not only directly related to the carrying out by the boards of their functions in supplying higher education but in fact necessary to the carrying out of such functions to the greatest possible benefit of the people of the state. In connection with certain grants or contributions to the Board of Regents of the University of Nebraska, that board heretofore has been created a public corporation for educational purposes. It is necessary, advisable and desirable that its status as a public corporation organized for educational purposes specifically include the exercise by it of the powers granted to it under sections 85-401 to 85-411 and that the Board of Trustees of the Nebraska State Colleges also be created a public corporation organized for educational purposes for the exercise of the powers granted to it under such sections.

**Source:** Laws 1969, c. 845, § 1, p. 3183.

**85-403.02 Repealed. Laws 1988, LB 802, § 41.**

**85-404 Dormitories; housing facilities; parking facilities; other facilities; revenue bonds; issuance; review by Coordinating Commission for Postsecondary Education; approval by Legislature.**

Either of the boards referred to in section 85-403 is hereby specifically authorized and empowered, by resolution or agreement, to pledge all or any part of the revenue and fees derived from the operation of the dormitories, residence halls, single-dwelling or multiple-dwelling units, buildings, and facilities for parking and other facilities for housing, boarding, athletic purposes, medical care, and physical development and other activities of students, faculties, or employees of such institutions referred to in section 85-403, or any of them, erected or acquired, or previously erected or acquired by such board, and contract as to the care, insurance, management, and operation of such buildings and facilities and the charges to be made and the rights of the holders of the revenue bonds. When the board contracts that the operation of any building or facility or part thereof shall be performed other than by the board itself, the board shall at all times maintain supervision thereof and control over the fees and charges imposed for the use thereof.

When such board proposes to pledge all or any part of the revenue and fees from buildings and facilities other than the building or facility to be constructed, the plans for such building or facility to be constructed, including financing plans, shall first be reviewed by the Coordinating Commission for Postsecondary Education as provided in section 85-1415 and approved or disapproved by the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council as provided in such section.

**Source:** Laws 1955, c. 352, § 2, p. 1076; Laws 1965, c. 581, § 4, p. 1875; Laws 1986, LB 995, § 2; Laws 1991, LB 663, § 87; Laws 1994, LB 683, § 5.

**85-405 Campus buildings and facilities; revenue bonds; registration; place of payment.**

All revenue bonds issued under the provisions of sections 85-403 to 85-411, shall be registered in the office of the Director of Administrative Services of the State of Nebraska. The revenue bonds may be payable at the office of the State Treasurer of Nebraska or such bank or trust company, either within or without the State of Nebraska, or such other place as may be determined by the board.

**Source:** Laws 1955, c. 352, § 3, p. 1076; Laws 1969, c. 851, § 2, p. 3198.

**85-406 Campus buildings and facilities; revenue bonds; proceeds; use.**

The proceeds of bonds provided for in sections 85-403 to 85-411, shall be used solely for the purpose for which they are issued and the expense of issuance of the revenue bonds in connection therewith.

**Source:** Laws 1955, c. 352, § 4, p. 1077.

**85-407 Campus buildings and facilities; refunding bonds; authorized.**

For the purpose of refunding any revenue bonds which may have been issued under the provisions of sections 85-403 to 85-411 and then outstanding, or for the purpose of refunding any indebtedness on the parking buildings and facilities of such institutions or on dormitories or other facilities for the

housing, boarding, and activities of students, faculties, and employees of the institutions under the control of the boards issued under the provisions of Chapter 85, article 4, the boards are authorized to issue revenue refunding bonds in the same manner as herein provided for the issuance of revenue bonds.

**Source:** Laws 1955, c. 352, § 5, p. 1077; Laws 1965, c. 581, § 5, p. 1876.

**85-408 Dormitories; housing facilities; other facilities; rates, fees, or charges; pledge for payment of bonds; surplus; review by Coordinating Commission for Postsecondary Education; approval by Legislature.**

The boards are authorized and directed to establish and maintain such schedule of rates, fees, or charges for the use of the facilities afforded by the buildings constructed or acquired under sections 85-401 to 85-411 and other facilities controlled by such board, the revenue of which in whole or in part is pledged to the holder of the bonds, which shall be in an amount at least sufficient on the amortization plan to pay the operating and maintenance charges thereof and the principal and interest representing the indebtedness against the income and revenue therefrom and may be sufficient in amount to provide for such bond reserve, replacement, and surplus funds as the boards in their discretion shall determine. The amounts in such funds shall be expended for such purposes in connection with the facilities as the boards shall determine, and any amount in any surplus or replacement fund and any amounts received through the sale, condemnation, or destruction of any facilities may be used to construct, repair, or replace any of the types of facilities described in section 85-403. Any amounts in such funds are specifically appropriated to the purposes of such funds and shall at all times be subject to the orders of the boards accordingly.

Before any single expenditure in excess of five hundred thousand dollars is made from any such surplus or replacement fund, the board concerned shall first submit such proposed expenditure to the Coordinating Commission for Postsecondary Education for review as provided in section 85-1415 and secure the approval of the Legislature or, if the Legislature is not in session, of the Executive Board of the Legislative Council as provided in such section.

**Source:** Laws 1955, c. 352, § 6, p. 1077; Laws 1969, c. 853, § 1, p. 3208; Laws 1986, LB 912, § 2; Laws 1991, LB 663, § 88; Laws 1994, LB 683, § 6; Laws 1999, LB 816, § 1; Laws 2006, LB 196, § 1.

**85-409 Campus buildings and facilities; utilities; board furnish.**

The respective boards, referred to in section 85-403, in their discretion may furnish heat, light, power, and other similar utilities to any building or structure, or for any activities covered by the provisions of sections 85-403 to 85-411, without charging the same against the revenue derived therefrom.

**Source:** Laws 1955, c. 352, § 7, p. 1077.

**85-410 Campus buildings and facilities; revenue bonds; issuance; public purpose; exempt from taxation.**

In exercising the powers granted it under sections 85-401 to 85-411, and in issuing revenue bonds as provided in sections 85-403 to 85-411, the board exercising such powers or issuing the bonds shall constitute and be and is hereby created as a public corporation organized for educational purposes and

§ 85-410 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

is declared to be a governmental subdivision and instrumentality of the State of Nebraska, and all bonds issued under the authority of sections 85-403 to 85-411, together with interest thereon, shall be wholly exempt from taxation.

**Source:** Laws 1955, c. 352, § 8, p. 1077; Laws 1969, c. 845, § 3, p. 3185.

**85-411 Campus buildings and facilities; board; powers.**

The boards are hereby authorized and empowered to do any and all things necessary and convenient to carry out the purposes and intent of sections 85-403 to 85-411.

**Source:** Laws 1955, c. 352, § 9, p. 1078.

**85-412 Deferred maintenance; legislative findings; sections; how construed.**

(1) The Legislature finds and determines that protecting investments in buildings through the completion of deferred maintenance, repair, renovation, and facility replacement construction projects is of critical importance to the State of Nebraska. The Legislature further recognizes that arresting the continued deterioration of buildings, limiting the effects of inflation on the costs of such deferred maintenance, repair, renovation, and facility replacement construction, and bringing such buildings into compliance with current health and safety requirements at the earliest possible time is necessary for protecting such investment in the buildings of the State of Nebraska. In order to accomplish these goals, it is necessary, desirable, and advisable that the Legislature provide for the receipt of funds for such purposes as soon as practicable with the repayment of such funds to be made over a period of years. The Legislature recognizes the commitment of (a) the Board of Regents of the University of Nebraska to provide matching funds on a one-to-one basis up to five million five hundred thousand dollars per year for a total of up to fifty-five million dollars and (b) the Board of Trustees of the Nebraska State Colleges to provide matching funds on a one-to-one basis up to four hundred thousand dollars per year for a total of four million dollars.

(2) Sections 85-412 to 85-418 do not modify, reduce, or eliminate any provision of subsection (10) of section 85-1414 requiring the approval of the Coordinating Commission for Postsecondary Education for any deferred maintenance, repair, renovation, or facility replacement construction project authorized by sections 85-414 and 85-417 and undertaken by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

**Source:** Laws 1998, LB 1100, § 1.

**85-413 University of Nebraska Facilities Program; created; use.**

The University of Nebraska Facilities Program is created. All funds appropriated to the program by the Legislature shall be used exclusively for deferred maintenance, repair, renovation, and facility replacement construction projects authorized pursuant to section 85-414.

**Source:** Laws 1998, LB 1100, § 2.

**85-414 University of Nebraska Facilities Program; funding; intent; Board of Regents of the University of Nebraska; powers and duties.**

(1) Beginning with the fiscal year commencing July 1, 1999, and continuing through the fiscal year ending June 30, 2009, the Legislature shall appropriate each fiscal year from the General Fund an amount not less than five million five hundred thousand dollars to the University of Nebraska Facilities Program to be used by the Board of Regents of the University of Nebraska to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the University of Nebraska Facilities Program at the end of each fiscal year until June 30, 2012, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the University of Nebraska Facilities Program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2009, nor shall the cumulative total of the General Fund appropriations for the program exceed fifty-five million dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following University of Nebraska projects, the Board of Regents of the University of Nebraska is authorized to make expenditures from the University of Nebraska Facilities Program for the following projects: (a) Deferred maintenance, repair, and renovation of University of Nebraska at Kearney Bruner Hall; (b) deferred maintenance, repair, and renovation of University of Nebraska at Kearney Otto Olson Vocational Arts Building; (c) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Love Library; (d) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Snyder Building at the West Central Research Extension Center; (e) construction of a facility to replace University of Nebraska-Lincoln Lyman Hall and Bancroft Hall; (f) construction of a facility to replace University of Nebraska-Lincoln Biochemistry Building; (g) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Hamilton Hall; (h) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Avery Hall; (i) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Poynter Hall; (j) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Swanson Hall, Bennet Hall, and Service Building; (k) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Library housed in Wittson Hall; (l) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Allwine Hall; (m) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Arts and Sciences Hall, and (n) demolition of University of Nebraska Miller Hall.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Regents of the University of Nebraska as provided for in section 85-412 shall be accounted for in the Nebraska State Accounting System through the University of Nebraska Facilities Program or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(5) The Board of Regents of the University of Nebraska shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University of Nebraska Facilities Program and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-415 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(6) The Board of Regents of the University of Nebraska shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 1998, LB 1100, § 3; Laws 2004, LB 1092, § 11.

**85-415 University of Nebraska Facilities Program; contracts authorized; limitations.**

(1) In order to accomplish any projects authorized by section 85-414, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the University of Nebraska and providing for the long-term payment of the cost of such project from the University of Nebraska Facilities Program. In no case shall any such contract extend for a period beyond July 15, 2011, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-412 and 85-414.

(2) The Board of Regents of the University of Nebraska shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Regents of the University of Nebraska as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Regents. The Board of Regents may also convey, lease, or lease back all or any part of the projects authorized by section 85-414 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

(3) The Board of Regents of the University of Nebraska is authorized to make expenditures for the purposes stated in this section and section 85-414 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Regents under section 85-412 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any indenture or other contract entered into by the Board of Regents as authorized by this section. The Board of Regents and the Department of Administrative Services shall, on or before January 1, 1999, enter into

an agreement providing for the allocation and distribution of any balances existing in the University of Nebraska Facilities Program or any other funds created as part of a long-term contract entered into by the Board of Regents pursuant to this section to the General Fund and any other funds designated by the Board of Regents as a source of funds for the match specified in section 85-412 either on July 15, 2011, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 1998, LB 1100, § 4.

**85-416 State College Facilities Program; created; use.**

The State College Facilities Program is created. All funds appropriated to the program by the Legislature shall be used exclusively for deferred maintenance, repair, and renovation projects authorized pursuant to section 85-417.

**Source:** Laws 1998, LB 1100, § 5.

**85-417 State College Facilities Program; funding; intent; Board of Trustees of the Nebraska State Colleges; powers and duties.**

(1) Beginning with the fiscal year commencing July 1, 1999, and continuing through the fiscal year ending June 30, 2009, the Legislature shall appropriate each fiscal year from the General Fund an amount not less than four hundred thousand dollars to the State College Facilities Program to be used by the Board of Trustees of the Nebraska State Colleges to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, at a minimum, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the State College Facilities Program at the end of each fiscal year until June 30, 2012, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2009, nor shall the cumulative total of the General Fund appropriations for the program exceed four million dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following state college projects, the Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Facilities Program for the following state college projects: (a) Deferred maintenance, repair, and renovation of Chadron State College Administration Building; (b) deferred maintenance, repair, and renovation of Chadron State College Memorial Hall; (c) deferred maintenance, repair, and renovation of Chadron State College Math and Science Building; (d) deferred maintenance, repair, and renovation of Chadron State College Old Library; (e) deferred maintenance, repair, and renovation of Chadron State College Reta King Library; (f) deferred maintenance, repair, and renovation of Peru State College Library; (g) deferred maintenance, repair, and renovation of Peru State College

Hoyt Science Hall; (h) deferred maintenance, repair, and renovation of Peru State College Old Gymnasium; (i) deferred maintenance, repair, and renovation of Peru State College Power Plant; (j) deferred maintenance, repair, and renovation of Wayne State College Broadcast Studio; (k) deferred maintenance, repair, and renovation of Wayne State College Hahn Administration Building; (l) deferred maintenance, repair, and renovation of Wayne State College Memorial Stadium; (m) deferred maintenance, repair, and renovation of Wayne State College Ramsey Theater; (n) deferred maintenance, repair, and renovation of Wayne State College Rice Auditorium; (o) deferred maintenance, repair, and renovation of Wayne State College Telecommunications Classrooms; and (p) systemwide miscellaneous fire and life safety, energy conservation, deferred repair, federal Americans with Disabilities Act of 1990, and asbestos removal projects.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Trustees of the Nebraska State Colleges as provided for in section 85-412 shall be accounted for in the Nebraska State Accounting System through the State College Facilities Program or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(5) The Board of Trustees of the Nebraska State Colleges shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the State College Facilities Program and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-418 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(6) The Board of Trustees of the Nebraska State Colleges shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 1998, LB 1100, § 6.

**85-418 State College Facilities Program; contracts authorized; limitations.**

(1) In order to accomplish any projects authorized by section 85-417, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the Nebraska state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Program. In no case shall any such contract extend for a period beyond July 15, 2011, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-412 and 85-417.

(2) The Board of Trustees of the Nebraska State Colleges shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Trustees as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Trustees. The Board of Trustees may also convey, lease, or lease back all or any part of the projects authorized by section 85-417 and the land on which such projects are situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to

this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Trustees.

(3) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures for the purposes stated in this section and section 85-417 from interest income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Trustees under section 85-412 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any indenture or other contract entered into by the Board of Trustees as authorized by this section. The Board of Trustees and the Department of Administrative Services shall, on or before January 1, 1999, enter into an agreement providing for the allocation and distribution of any balances existing in the State College Facilities Program or any other funds created as part of a long-term contract entered into by the Board of Trustees pursuant to this section to the General Fund and any other funds designated by the Board of Trustees as a source of funds for the match specified in section 85-412 either on July 15, 2011, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 1998, LB 1100, § 7.

**85-419 Construction and improvement projects; legislative findings.**

(1) The Legislature finds and determines that protecting investments in buildings through the completion of deferred maintenance, repair, renovation, and facility replacement construction projects is of critical importance to the State of Nebraska. The Legislature further recognizes that arresting the continued deterioration of buildings, limiting the effects of inflation on the costs of such deferred maintenance, repair, renovation, and facility replacement construction, and bringing such buildings into compliance with current health and safety requirements at the earliest possible time is necessary for protecting such investment in the buildings of the State of Nebraska. In order to accomplish these goals, it is necessary, desirable, and advisable that the Legislature provide for the receipt of funds for such purposes as soon as practicable with the repayment of such funds to be made over a period of years. The Legislature recognizes the commitment of (a) the Board of Regents of the University of Nebraska to provide matching funds up to eleven million dollars per year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2021, for a total of up to one hundred twenty-one million dollars to supplement amounts appropriated from the General Fund pursuant to section 85-421 and (b) the Board of Trustees of the Nebraska State Colleges to provide matching funds up to one million two hundred thousand dollars per year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2020, for a total of up to fourteen million four hundred thousand dollars to

supplement amounts appropriated from the General Fund pursuant to section 85-424.

(2) Sections 85-419 to 85-425 do not modify, reduce, or eliminate any provision of subsection (10) of section 85-1414 requiring the approval of the Coordinating Commission for Postsecondary Education for any deferred maintenance, repair, renovation, facility addition, or facility replacement construction project authorized by section 85-421 or 85-424 and undertaken by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

**Source:** Laws 2006, LB 605, § 1.

**85-420 University of Nebraska Facilities Program of 2006; created; use of appropriations.**

The University of Nebraska Facilities Program of 2006 is created. All funds appropriated to the program by the Legislature shall be used exclusively for deferred maintenance, repair, renovation, facility renovation, and facility replacement construction projects authorized pursuant to section 85-421.

**Source:** Laws 2006, LB 605, § 2.

**85-421 University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.**

(1) The Legislature shall appropriate from the General Fund (a) an amount not less than five million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2009, and (b) an amount not less than eleven million dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2020, to the University of Nebraska Facilities Program of 2006 to be used by the Board of Regents of the University of Nebraska to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the University of Nebraska Facilities Program of 2006 at the end of each fiscal year until June 30, 2021, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the University of Nebraska Facilities Program of 2006 are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2020, nor shall the cumulative total of the General Fund appropriations for the program exceed one hundred thirty-seven million five hundred thousand dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following University of Nebraska projects, the Board of Regents of the University of Nebraska is authorized to make expenditures from the University of Nebraska Facilities Program of 2006 for the following projects: (a) Deferred maintenance, repair, and renovation of University of Ne-

braska at Kearney Bruner Hall; (b) construction of University of Nebraska at Kearney campus-wide central utilities plant and system; (c) construction of facilities to replace University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls; (d) construction of a facility to replace University of Nebraska-Lincoln Keim Hall or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Keim Hall; (e) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Sheldon Memorial Art Gallery; (f) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Animal Science Complex; (g) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Poynter, Bennet, and Wittson Halls; (h) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases; (i) deferred maintenance, repair, and renovation of University of Nebraska Medical Center College of Dentistry; (j) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Library; and (k) deferred maintenance, repair, and renovation of University of Nebraska at Omaha utilities infrastructure.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Regents of the University of Nebraska as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the University of Nebraska Facilities Program of 2006 or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(5) The Board of Regents of the University of Nebraska shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University of Nebraska Facilities Program of 2006 and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-422 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(6) The Board of Regents of the University of Nebraska shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 2006, LB 605, § 3.

**85-422 Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.**

(1) In order to accomplish any projects authorized by section 85-421, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the University of Nebraska and providing for the long-term payment of the cost of such project from the University of Nebraska Facilities Program of 2006. In no case shall any such contract extend for a period beyond December 31, 2021, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 and 85-421.

(2) The Board of Regents of the University of Nebraska shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such

contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Regents of the University of Nebraska as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Regents. The Board of Regents may also convey, lease, or lease back all or any part of the projects authorized by section 85-421 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

(3) The Board of Regents of the University of Nebraska is authorized to make expenditures for the purposes stated in this section and section 85-421 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Regents under section 85-419 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any resolution, indenture, or other contract entered into by the Board of Regents as authorized by this section. The Board of Regents and the Department of Administrative Services shall, on or before January 1, 2007, enter into an agreement providing for the allocation and distribution of any balances existing in the University of Nebraska Facilities Program of 2006 or any other funds created as part of a long-term contract entered into by the Board of Regents pursuant to this section to the General Fund and any other funds designated by the Board of Regents as a source of funds for the match specified in section 85-419 either on December 31, 2021, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 2006, LB 605, § 4.

**85-423 State College Facilities Program of 2006; created; use of appropriations.**

The State College Facilities Program of 2006 is created. All funds appropriated to the program by the Legislature shall be used exclusively for deferred maintenance, repair, and renovation projects authorized pursuant to section 85-424.

**Source:** Laws 2006, LB 605, § 5.

**85-424 State College Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.**

(1) Beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2020, the Legislature shall appropriate each fiscal year from the General Fund an amount not less than one million one hundred twenty-five thousand dollars to the State College Facilities Program of 2006 to be used by the Board of Trustees of the Nebraska State Colleges to accomplish projects as provided in this section. Through the

allotment process established in section 81-1113, at a minimum, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the State College Facilities Program of 2006 at the end of each fiscal year until June 30, 2021, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2020, nor shall the cumulative total of the General Fund appropriations for the program exceed fifteen million seven hundred fifty thousand dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following state college projects, the Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Facilities Program of 2006 for the following state college projects: (a) Deferred maintenance, repair, and renovation of Chadron State College Academic/Administration Building; (b) design and placement of a new Peru State College emergency power generator; (c) replacement of existing Peru State College Al Wheeler Activity Center bleachers; (d) addition to and deferred maintenance, repair, and renovation of Peru State College Al Wheeler Activity Center; (e) addition to and deferred maintenance, repair, and renovation of Wayne State College Campus Services Building; (f) deferred maintenance, repair, and renovation of Wayne State College Rice Auditorium; (g) deferred maintenance, repair, and renovation of Wayne State College Memorial Stadium; and (h) systemwide miscellaneous fire and life safety, energy conservation, deferred repair, federal Americans with Disabilities Act of 1990, and asbestos removal projects.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Trustees of the Nebraska State Colleges as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the State College Facilities Program of 2006 or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(5) The Board of Trustees of the Nebraska State Colleges shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the State College Facilities Program of 2006 and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-425 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(6) The Board of Trustees of the Nebraska State Colleges shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 2006, LB 605, § 6.

**85-425 Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.**

(1) In order to accomplish any projects authorized by section 85-424, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the Nebraska state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Program of 2006. In no case shall any such contract extend for a period beyond December 31, 2020, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 and 85-424.

(2) The Board of Trustees of the Nebraska State Colleges shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Trustees as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Trustees. The Board of Trustees may also convey, lease, or lease back all or any part of the projects authorized by section 85-424 and the land on which such projects are situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Trustees.

(3) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures for the purposes stated in this section and section 85-424 from interest income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Trustees under section 85-419 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any resolution, indenture, or other contract entered into by the Board of Trustees as authorized by this section. The Board of Trustees and the Department of Administrative Services shall, on or before January 1, 2007, enter into an agreement providing for the allocation and distribution of any balances existing in the State College Facilities Program of 2006 or any other funds created as part of a long-term contract entered into by the Board of Trustees pursuant to this section to the General Fund and any other funds designated by the Board of Trustees as a source of funds for the match specified in section 85-419 either on December 31, 2020, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 2006, LB 605, § 7.

**ARTICLE 5****TUITION AND FEES AT STATE EDUCATIONAL INSTITUTIONS****Cross References**

State Department of Education, loans to needy students, source, limitations, see section 79-2,106.

- Section
- 85-501. State educational institutions; nonresident fees.
  - 85-502. State postsecondary educational institution; residence requirements.
  - 85-502.01. Repealed. Laws 1980, LB 304, § 3.
  - 85-502.02. Repealed. Laws 1980, LB 304, § 3.
  - 85-503. State educational institutions; tuition.
  - 85-504. State educational institutions; fees; waiver.
  - 85-505. Nebraska National Guard; member; tuition; credit; limitation.
  - 85-505.01. Nebraska National Guard; tuition assistance program; limitations; conditions.
  - 85-506. Nebraska National Guard; member; certificate as to guard performance; tuition credit.
  - 85-507. Nebraska National Guard; spouse and children of deceased member; tuition; credit; conditions.
  - 85-508. Nebraska National Guard; tuition; credits; educational institution; reimbursement.

**85-501 State educational institutions; nonresident fees.**

All state educational institutions shall charge nonresident fees to be paid by nonresidents of Nebraska who shall matriculate at any such institution, and the governing board of each institution may fix and collect such fees. Subject to the minimum standards provided by section 85-502, resident status shall be determined at the time of each registration according to rules and regulations which the governing board of each institution shall establish.

**Source:** Laws 1923, c. 57, § 1, p. 178; C.S.1929, § 85-501; R.S.1943, § 85-501; Laws 1947, c. 355, § 1, p. 1106; Laws 1980, LB 304, § 1.

**85-502 State postsecondary educational institution; residence requirements.**

Rules and regulations established by the governing board of each state postsecondary educational institution shall require as a minimum that a person is not deemed to have established a residence in this state, for purposes of sections 85-501 to 85-504, unless:

(1) Such person is of legal age or is an emancipated minor and has established a home in Nebraska where he or she is habitually present for a minimum period of one hundred eighty days, with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(2) The parents, parent, or guardian having custody of a minor registering in the educational institution have established a home in Nebraska where such parents, parent, or guardian are or is habitually present with the bona fide intention to make this state their, his, or her permanent residence, supported by documentary proof. If a student has matriculated in any state postsecondary educational institution while his or her parents, parent, or guardian had an established home in this state, and the parents, parent, or guardian ceases to reside in the state, such student shall not thereby lose his or her resident status if such student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(3) Such student is of legal age and is a dependent for federal income tax purposes of a parent or former guardian who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(4) Such student is a nonresident of this state prior to marriage and marries a person who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(5) Except as provided in subdivision (8) of this section, such student, if an alien, has applied to or has a petition pending with the United States Immigration and Naturalization Service to attain lawful status under federal immigration law and has established a home in Nebraska for a period of at least one hundred eighty days where he or she is habitually present with the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(6) Such student is a staff member or a dependent of a staff member of the University of Nebraska, one of the Nebraska state colleges, or one of the community college areas who joins the staff immediately prior to the beginning of a term from an out-of-state location;

(7) Such student is on active duty with the armed services of the United States and has been assigned a permanent duty station in Nebraska, or is a legal dependent of a person on active duty with the armed services of the United States assigned a permanent duty station in Nebraska; or

(8)(a) Such student resided with his or her parent, guardian, or conservator while attending a public or private high school in this state and:

(i) Graduated from a public or private high school in this state or received the equivalent of a high school diploma in this state;

(ii) Resided in this state for at least three years before the date the student graduated from the high school or received the equivalent of a high school diploma;

(iii) Registered as an entering student in a state postsecondary educational institution not earlier than the 2006 fall semester; and

(iv) Provided to the state postsecondary educational institution an affidavit stating that he or she will file an application to become a permanent resident at the earliest opportunity he or she is eligible to do so.

(b) If the parent, guardian, or conservator with whom the student resided ceases to reside in the state, such student shall not lose his or her resident status under this subdivision if the student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof.

**Source:** Laws 1923, c. 57, § 4, p. 179; C.S.1929, § 85-504; R.S.1943, § 85-502; Laws 1951, c. 348, § 1, p. 1137; Laws 1961, c. 458, § 1, p. 1397; Laws 1965, c. 582, § 1, p. 1877; Laws 1971, LB 408, § 1; Laws 1980, LB 304, § 2; Laws 1982, LB 796, § 1; Laws 2006, LB 239, § 1.

Requirement of continuous residency of four months independent of school attendance to establish residence for tuition purposes does not infringe on one's constitutional rights.

Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).

**85-502.01 Repealed. Laws 1980, LB 304, § 3.**

**85-502.02 Repealed. Laws 1980, LB 304, § 3.**

**85-503 State educational institutions; tuition.**

All state institutions are empowered to fix tuition and other fees to be paid by students residing in Nebraska.

**Source:** Laws 1923, c. 57, § 2, p. 178; C.S.1929, § 85-502.

**85-504 State educational institutions; fees; waiver.**

Rules may be made by each institution for waiving or refunding fees to students maintaining high scholarship, or to those who, maintaining satisfactory scholarship, are in need of financial assistance.

**Source:** Laws 1923, c. 57, § 3, p. 178; C.S.1929, § 85-503.

**85-505 Nebraska National Guard; member; tuition; credit; limitation.**

Any member of the Nebraska National Guard who enrolls in any state-supported university, college, or community college or any independent, not-for-profit, regionally accredited college or university in this state shall be entitled to a credit of seventy-five percent of the resident tuition charges of such school, except that any member who attends an independent, not-for-profit, regionally accredited college or university in this state shall receive a credit in an amount no higher than that person would receive if he or she attended the University of Nebraska-Lincoln. Such entitlement shall be for a period of ten years from the date of the member's initial membership so long as the member maintains satisfactory performance with the guard and pursues his or her course of study in such institution in a manner which satisfies the normal requirements of the institution. If a member is unable to complete his or her course of study within the ten-year period due to deployment on federal or state active-duty status for not less than one hundred twenty days, the Adjutant General may extend the entitlement period for such member for a period equal to the period of such person's active-duty status, not to exceed a maximum of five years. During the extended entitlement period, the member shall maintain satisfactory performance with the guard and pursue his or her course of study in such institution which satisfies the usual requirements of such institution. Any member entitled to a credit of seventy-five percent of resident tuition charges and enrolled in the tuition credit program as of October 1, 1992, shall on and after May 27, 1999, be entitled to the credit at such rate until completion of the educational program in which he or she is enrolled on October 1, 1992, so long as the member maintains satisfactory performance with the guard and pursues his or her course of study in such institution in a manner which satisfies the normal requirements of the institution. The number of individuals granted tuition credit shall not exceed the number specified in section 85-505.01 during any fiscal year, and the amount of tuition credits granted shall not exceed nine hundred thousand dollars during any fiscal year. When determining to whom such tuition credit shall be awarded, priority shall be given to those individuals who have previously received tuition credits while a National Guard member, and the Nebraska National Guard shall apply those program qualifications and limitations consistent with efficient and effective program management as determined by the Adjutant General.

**Source:** Laws 1974, LB 982, § 1; Laws 1978, LB 564, § 1; Laws 1983, LB 267, § 1; Laws 1986, LB 931, § 1; Laws 1988, LB 866, § 1; Laws 1992, Third Spec. Sess., LB 10, § 1; Laws 1996, LB 1139, § 1; Laws 1999, LB 243, § 1; Laws 2008, LB746, § 1.  
Effective date July 18, 2008.

**85-505.01 Nebraska National Guard; tuition assistance program; limitations; conditions.**

§ 85-505.01 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(1) The tuition assistance program prescribed in sections 85-505 to 85-508 shall not be available to:

- (a) More than one thousand two hundred members during any fiscal year;
- (b) Commissioned and warrant officers who have a baccalaureate degree or are eligible for any other equivalent federal benefits;
- (c) Enlisted personnel entitled to any equivalent federal educational benefits, except that this subdivision shall not apply to personnel receiving assistance from the federal Educational Assistance Program for Members of the Selected Reserve, as it existed on September 1, 2001; and
- (d) Enlisted personnel who have a baccalaureate degree.

(2) The tuition assistance program prescribed in sections 85-505 to 85-508 shall be available to members of the Nebraska National Guard for a period of ten years, as provided in section 85-505, from the date of initial membership.

(3) Any member of the Nebraska National Guard receiving tuition assistance under sections 85-505 to 85-508 may obtain only one undergraduate degree under such tuition assistance program. Only credit-bearing courses which meet degree requirements shall be approved for tuition assistance. Members shall not receive tuition assistance for any noncredit courses.

(4) If a member of the Nebraska National Guard voluntarily withdraws from a course for which he or she is receiving tuition assistance, the member shall be liable for all costs relating to such withdrawal, including, but not limited to, all of the costs billed by the educational institution to the Nebraska National Guard. Reimbursement shall be in accordance with section 72-1601.

(5) Any member of the Nebraska National Guard who receives tuition assistance shall agree in writing to serve in the Nebraska National Guard for three years after the completion of the courses for which tuition assistance was given. Any member who receives tuition assistance may be asked to reimburse the State of Nebraska if any such member leaves the Nebraska National Guard during such three-year period. Reimbursement shall be in accordance with section 72-1601.

(6) The Military Department shall retain the responsibility and authority to establish any limitations and controls it deems necessary to ensure maximum fiscal efficiency and productivity of the tuition assistance program prescribed in sections 85-505 to 85-508.

**Source:** Laws 1986, LB 931, § 2; Laws 1987, LB 436, § 1; Laws 1988, LB 866, § 2; Laws 1989, LB 13, § 4; Laws 2001, LB 286, § 1; Laws 2008, LB746, § 2.  
Effective date July 18, 2008.

**85-506 Nebraska National Guard; member; certificate as to guard performance; tuition credit.**

It shall be the responsibility of the individual member of the Nebraska National Guard to obtain a certificate from his or her commanding officer attesting as to his or her satisfactory guard performance and to present the same to the educational institution in order to obtain tuition credit. Such certification shall be accomplished at the time of enrollment for each semester or academic term for which tuition credit is requested. Such certification shall

include a signed agreement by the individual to serve in the National Guard for a minimum of three years from the date of certification.

**Source:** Laws 1974, LB 982, § 2; Laws 1978, LB 564, § 2; Laws 1986, LB 931, § 3.

**85-507 Nebraska National Guard; spouse and children of deceased member; tuition; credit; conditions.**

The spouse and children of any member of the Nebraska National Guard who dies while serving in the active service of the state shall be entitled to a credit of one hundred percent of the tuition charges in any state-supported university, college, or community college or any independent, not-for-profit, regionally accredited college or university in this state, except that any spouse or child who attends an independent, not-for-profit, regionally accredited college or university in this state shall receive a credit in an amount no higher than that spouse or child would receive if he or she attended the University of Nebraska-Lincoln. Such tuition credit shall be for any undergraduate course of education not exceeding four years, except that no credit shall be granted to the spouse after the tenth anniversary of the member's death and no credit shall be granted to a child after such child's twenty-fifth birthday. All persons eligible for tuition credit under this section shall obtain a certificate of eligibility from the Adjutant General of the Nebraska National Guard and present such certificate to the educational institution.

**Source:** Laws 1978, LB 564, § 3; Laws 1986, LB 931, § 4; Laws 1996, LB 1139, § 2.

**85-508 Nebraska National Guard; tuition; credits; educational institution; reimbursement.**

Upon receipt of a certificate described in section 85-506, the educational institution shall endorse on the certificate the dollar amount of the tuition credit granted pursuant to such section and return such certificate to the Nebraska National Guard office issuing the certificate. The educational institution shall compile a record of the total dollar amount of the tuition credits granted for the academic term. At the completion of the academic term, the institution shall submit the total amount of such credits together with a request for reimbursement of such amount to the National Guard. Upon receipt of the request, the National Guard shall reimburse the institution.

**Source:** Laws 1980, LB 526, § 1; Laws 1986, LB 931, § 5.

**ARTICLE 6**

**PUBLIC INSTITUTIONS OF HIGHER EDUCATION**

(a) DISMISSAL OR EXPULSION OF FACULTY OR STUDENTS

- |         |  |
|---------|--|
| Section |  |
| 85-601. | Interference with operation; faculty, administrative staff, student; dismissal or expulsion. |
| 85-602. | Faculty, administrative staff, student; dismissal or expulsion; procedure.                   |
| 85-603. | Faculty, administrative staff, student; dismissal or expulsion; order; contents; service.    |
| 85-604. | Governing body; rules and regulations; adopt.  |
| 85-605. | Terms, defined.  |

(b) RETIREMENT

- |         |   |
|---------|---|
| 85-606. | University of Nebraska, state colleges, community colleges; permissive retirement; compulsory retirement; exceptions; retirement contributions; faculty member; revocation of tenure; rights. |
|---------|---|

§ 85-601 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section

85-606.01. University of Nebraska; state colleges; community colleges; retirement annuity contracts; purchase.

(c) ADMISSION

85-607. Denial of admission of certain qualified children; prohibited.

(a) DISMISSAL OR EXPULSION OF FACULTY OR STUDENTS

**85-601 Interference with operation; faculty, administrative staff, student; dismissal or expulsion.**

It shall be grounds for the dismissal of any member of the faculty or administrative staff employed by, or the expulsion of any student attending, any public institution of higher education in this state to use or assist others in any way in the use of force or to counsel, recommend, or urge the use of force or the threat of force or the seizure of property under the control of such institution, or by any act or action not sanctioned by law to prevent the faculty, administrative officers, employees or students in such institution from engaging in their normal duties in connection with the operation of the institution or pursuing their studies at such institution.

**Source:** Laws 1971, LB 445, § 1.

**85-602 Faculty, administrative staff, student; dismissal or expulsion; procedure.**

No person shall be dismissed or expelled under the provisions of section 85-601 until he has been accorded a public hearing under rules and regulations for the administration of sections 85-601 to 85-605 established by the governing body of the institution. Notice of such hearing and a formal written statement of the charges against him shall be served by either registered or certified mail, sent to his current address as shown on the records of the institution, at least twenty days before the date set for hearing. He shall be entitled to file a written response to such charges, to be present in person and by counsel at the hearing, and to testify and produce other witnesses on his behalf.

**Source:** Laws 1971, LB 445, § 2.

**85-603 Faculty, administrative staff, student; dismissal or expulsion; order; contents; service.**

Dismissal or expulsion of any person under the provisions of section 85-601 shall be by written order, which shall contain findings of fact upon which dismissal or expulsion is based, and shall be signed by an authorized agent of the governing body. The order shall be entered within thirty days after the hearing, shall state its effective date, and shall be served by either registered or certified mail, return receipt requested, sent to his current address as shown on the records of the institution.

**Source:** Laws 1971, LB 445, § 3.

**85-604 Governing body; rules and regulations; adopt.**

The governing body of each public institution of higher education in this state shall adopt rules and regulations for the administration of the provisions of sections 85-601 to 85-605.

**Source:** Laws 1971, LB 445, § 4.

**85-605 Terms, defined.**

For purposes of sections 85-601 to 85-605, (1) dismissal shall not include the failure to renew a probationary appointment of any faculty member or administrative staff member and (2) public institution of higher education shall include the University of Nebraska, the state colleges, and the community colleges.

**Source:** Laws 1971, LB 445, § 5; Laws 1993, LB 239, § 7.

**(b) RETIREMENT****85-606 University of Nebraska, state colleges, community colleges; permissive retirement; compulsory retirement; exceptions; retirement contributions; faculty member; revocation of tenure; rights.**

(1) Employees of the state colleges, community colleges, and the University of Nebraska may retire upon reaching the age of sixty-five. Any law enforcement personnel reaching the age of seventy shall retire, except that, with the annual approval of the governing board of the institution and the employee, such employee may continue his or her employment beyond the attainment of age seventy.

(2) Any employee continuing to work after age sixty-five shall continue to make contributions to the appropriate retirement system until the date of retirement.

(3) No faculty member of the University of Nebraska, the Nebraska State Colleges, or the community colleges shall have his or her tenure status revoked without due process.

**Source:** Laws 1979, LB 15, § 1; Laws 1981, LB 463, § 4; Laws 1982, LB 287, § 6; Laws 1987, LB 296, § 5; Laws 1997, LB 623, § 52.

**85-606.01 University of Nebraska; state colleges; community colleges; retirement annuity contracts; purchase.**

The Board of Trustees of the Nebraska State Colleges, any community college area board, and the Board of Regents of the University of Nebraska shall have the authority to purchase retirement annuity contracts for any or all of their employees at the direction of the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and may enter into contracts with their employees providing for the purchase of such retirement annuity contracts under the provisions of the Internal Revenue Code. Such employment contracts may provide that the amounts contributed by the employer for such annuity contracts shall be the result of an agreement of the employee to take a reduction in salary or to forego an increase in salary, but only to the extent such amounts are earned by the employee after the agreement becomes effective. Such an agreement must be legally binding and irrevocable with respect to amounts earned while the agreement is in effect. The right of an employee to such an annuity contract is nonforfeitable, except for failure to pay future premiums. Such an annuity contract is nontransferable.

**Source:** Laws 1967, c. 256, § 1, p. 677; Laws 1969, c. 851, § 1, p. 3198; Laws 1969, c. 852, § 1, p. 3199; Laws 1969, c. 849, § 3, p. 3194;

**§ 85-606.01 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

Laws 1969, c. 584, § 129, p. 2429; Laws 1975, LB 54, § 1; Laws 1978, LB 756, § 54; Laws 1980, LB 817, § 2; R.S.1943, (1981), § 85-195; Laws 1995, LB 7, § 153; Laws 1995, LB 574, § 91.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**(c) ADMISSION**

**85-607 Denial of admission of certain qualified children; prohibited.**

No publicly funded college or university in this state shall prohibit the admission of any child educated in any school which elects to meet the requirements of subsections (2) through (6) of section 79-1601 if the child is qualified for admission as shown by testing results.

**Source:** Laws 1984, LB 928, § 5; Laws 1996, LB 900, § 1079; Laws 1999, LB 813, § 58.

**ARTICLE 7**

**INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION**

**Section**

- 85-701. Unconstitutional.
- 85-702. Unconstitutional.
- 85-703. Unconstitutional.
- 85-704. Unconstitutional.
- 85-706. Unconstitutional.
- 85-707. Unconstitutional.
- 85-708. Unconstitutional.
- 85-709. Unconstitutional.
- 85-710. Unconstitutional.
- 85-711. Unconstitutional.
- 85-712. Unconstitutional.
- 85-713. Unconstitutional.
- 85-714. Unconstitutional.
- 85-715. Unconstitutional.
- 85-716. Unconstitutional.
- 85-717. Unconstitutional.
- 85-718. Unconstitutional.
- 85-719. Unconstitutional.
- 85-720. Unconstitutional.
- 85-721. Unconstitutional.

**85-701 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-702 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-703 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-704 Unconstitutional.**



§ 85-718 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

**85-718 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-719 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-720 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**85-721 Unconstitutional.**

**Note:** The Revisor of Statutes, as authorized by section 49-705, has omitted sections 85-701 to 85-721, which the Supreme Court has held to be unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

**ARTICLE 8  
RESEARCH CENTERS**

(a) EUGENE C. EPPLEY INSTITUTE FOR RESEARCH  
IN CANCER AND ALLIED DISEASES

Section

85-801. Eugene C. Eppley Institute for Research in Cancer and Allied Diseases; established; location.

85-802. Institute; Board of Regents; operate; regulate.

85-803. Institute; director; appointment; qualifications; responsibilities.

85-804. Institute; purpose; function; grants; gifts.

(b) REGIONAL RADIATION HEALTH CENTER

85-805. Regional Radiation Health Center; created; purpose.

85-806. Regional Radiation Health Center; duties.

85-807. Regional Radiation Health Center; public power district; payments to center; benefits; requirements.

(a) EUGENE C. EPPLEY INSTITUTE FOR RESEARCH  
IN CANCER AND ALLIED DISEASES

**85-801 Eugene C. Eppley Institute for Research in Cancer and Allied Diseases; established; location.**

There is hereby established the Eugene C. Eppley Institute for Research in Cancer and Allied Diseases, to be located on the campus of the University of Nebraska Medical Center in Omaha, Nebraska.

**Source:** Laws 1972, LB 1374, § 1.

**85-802 Institute; Board of Regents; operate; regulate.**

The institute shall operate in accordance with the policies and regulations of the Board of Regents of the University of Nebraska.

**Source:** Laws 1972, LB 1374, § 2.

**85-803 Institute; director; appointment; qualifications; responsibilities.**

The director of the institute shall be appointed by the Board of Regents of the University of Nebraska. He shall be the chief executive officer and scientific director of the institute, shall hold professorial rank and shall be responsible to

the Board of Regents through the Chancellor of the University of Nebraska Medical Center and the president of the university.

**Source:** Laws 1972, LB 1374, § 3.

**85-804 Institute; purpose; function; grants; gifts.**

It shall be the purpose and function of the institute to carry on research into the causes, control and cure for cancer and similar disorders and to conduct symposia and lectures and to issue monographs, treatises and reports so that the findings, techniques and discoveries developed or confirmed by the institute may be disseminated to the medical profession, medical schools and research centers to accelerate the conquest of cancer and to relieve those suffering therefrom. To carry out such purpose and function, the institute may receive and accept, through the University of Nebraska, any grants, gifts or other contributions from any governmental or public agency or from any other person, firm or corporation.

**Source:** Laws 1972, LB 1374, § 4.

(b) REGIONAL RADIATION HEALTH CENTER

**85-805 Regional Radiation Health Center; created; purpose.**

There is hereby created a Regional Radiation Health Center, to be developed within the University of Nebraska Medical Center Hospital and supervised by the University of Nebraska Medical Center, for the purpose of offering: (1) Specialized medical and related services for evaluation, treatment, and management of radiation casualties; (2) routine medical, radiation protection, consultation, and associated services to nuclear-oriented facilities and industry generally associated with radiation sources; and (3) educational programs for nuclear safety, with emphasis on preventive medical and radiologic protection in industry.

Regional Radiation Health Center facilities and services may also be utilized for the care and treatment of patients other than radiation casualties whenever such facilities are not being fully utilized for radiation casualties.

**Source:** Laws 1972, LB 1405, § 1.

**85-806 Regional Radiation Health Center; duties.**

In order to carry out the purposes for which it is established, the Regional Radiation Health Center shall: (1) Employ professional medical and allied health personnel for the diagnosis and treatment of radiation casualties; (2) acquire appropriate instrumentation and equipment to support the unique aspects of diagnosis and treatment of radiation injury; (3) develop specialized patient care facilities for initial receiving, evaluation, decontamination and emergency treatment of radiation casualties; (4) specialized patient care facilities for long-term inpatient management of radiation injury; and (5) any appropriate support facilities to assist the comprehensive management of radiation injury.

Any of the facilities and services provided for in subdivisions (1) to (5) of this section may be applied to the care and treatment of patients other than radiation casualties whenever not being fully utilized for radiation casualties.

**Source:** Laws 1972, LB 1405, § 2.

**85-807 Regional Radiation Health Center; public power district; payments to center; benefits; requirements.**

Upon the payment of eighty thousand dollars to the University of Nebraska Medical Center for the development of the Regional Radiation Health Center described in sections 85-805 and 85-806, a public power district owning a nuclear electric generating plant in Nebraska shall have the right to refer patients to the Regional Radiation Health Center and obtain services at cost, and no public power district shall operate a nuclear electric generating plant in Nebraska without obtaining such right.

**Source:** Laws 1972, LB 1405, § 4.

**ARTICLE 9  
POSTSECONDARY EDUCATION**

**Cross References**

**State Department of Education**, loans to needy students, see section 79-2,106.

(a) GENERAL PROVISIONS

Section	
85-901.	Eye protective devices; required; when; term, defined; Commissioner of Education; duties.
85-902.	Information on meningococcal disease; requirements.
85-902.01.	Repealed. Laws 1991, LB 663, § 136.
85-903.	Repealed. Laws 1991, LB 663, § 137.
85-904.	Repealed. Laws 1991, LB 663, § 137.
85-905.	Repealed. Laws 1991, LB 663, § 137.
85-906.	Repealed. Laws 1991, LB 663, § 137.
85-907.	Repealed. Laws 1991, LB 663, § 137.
85-908.	Repealed. Laws 1991, LB 663, § 137.
85-909.	Repealed. Laws 1991, LB 663, § 137.
85-910.	Repealed. Laws 1991, LB 663, § 137.
85-910.01.	Repealed. Laws 1991, LB 663, § 136.
85-911.	Repealed. Laws 1991, LB 663, § 136.
85-912.	Repealed. Laws 1991, LB 663, § 136.
85-913.	Repealed. Laws 1991, LB 663, § 137.
85-914.	Repealed. Laws 1987, LB 16, § 2.
85-915.	Repealed. Laws 1991, LB 663, § 137.
85-916.	Repealed. Laws 1984, LB 290, § 9.
85-916.01.	Repealed. Laws 1991, LB 663, § 137.
85-916.02.	Repealed. Laws 1991, LB 663, § 137.

(b) ROLE AND MISSION ASSIGNMENTS

85-917.	Legislative intent.
85-918.	Definitions; where found.
85-919.	Instructional activities, defined.
85-920.	Research activities, defined.
85-921.	Public service activities, defined.
85-922.	Program responsibility, defined.
85-923.	Cooperative program delivery, defined.
85-924.	Regional program responsibility, defined.
85-925.	Comprehensive degree offerings, defined.
85-926.	General academic transfer programs, defined.
85-927.	Applied technology and occupational education, defined.
85-928.	Baccalaureate general academic, defined.
85-929.	Baccalaureate occupational, defined.
85-930.	Baccalaureate professional, defined.
85-931.	Graduate degree programs, defined.
85-932.	Continuing education for occupations and professions, defined.
85-932.01.	Foundations education, defined.

## POSTSECONDARY EDUCATION

Section	
85-933.	Expenditures in conflict with role and mission assignments; prohibited.
85-934.	Nondegree recreational and avocational courses; self-supporting; exception.
85-935.	University of Nebraska system; role and mission assignments; Board of Regents; adopt policies.
85-936.	University of Nebraska; public service activities; statewide responsibility.
85-937.	University of Nebraska; degree programs; sole responsibility.
85-938.	University of Nebraska; maintain graduate college and faculty status.
85-939.	University of Nebraska; continuing education services; statewide responsibility.
85-940.	Repealed. Laws 1991, LB 663, § 136.
85-941.	University of Nebraska; certain graduate programs; baccalaureate professional programs; agriculture and natural resources programs; responsibilities.
85-942.	University of Nebraska; mission; priorities.
85-943.	University of Nebraska; associate degree, diploma, and certificate-in-course; programs authorized; conditions; exception.
85-944.	University of Nebraska; health professions programs; priorities.
85-945.	University of Nebraska at Omaha; urban-oriented programs; primary responsibility; doctoral programs; authorized; when.
85-946.	University of Nebraska-Lincoln; doctoral and postdoctoral programs; primary responsibility; exception.
85-946.01.	University of Nebraska-Lincoln; research; primary responsibility; other research activities.
85-947.	University of Nebraska Medical Center; health-related programs; primary responsibility.
85-947.01.	University of Nebraska at Kearney; programs authorized.
85-948.	University of Nebraska; health programs; sole responsibility; exception.
85-949.	State college system; role and mission assignments; board of trustees; adopt policies.
85-950.	State colleges; public service and continuing education activities; regional responsibility; exception.
85-951.	State colleges; priorities.
85-952.	State colleges; programs permitted; limitations.
85-953.	State colleges; research activities permitted.
85-954.	State colleges; master's degree programs in education; graduate business courses; joint advisory committee; established.
85-955.	Transferred to section 85-947.01.
85-956.	Chadron State College; programs authorized.
85-957.	Peru State College; programs authorized.
85-958.	Wayne State College; programs authorized.
85-959.	Community colleges; role and mission assignments.
85-960.	Community colleges; public service activities; responsibility.
85-960.01.	Community colleges; applied research activities permitted.
85-960.02.	Community colleges; foundations education.
85-961.	Community colleges; responsibility in less than baccalaureate degree program areas.
85-962.	Community colleges; legislative intent; instructional and service priorities.
85-963.	Community college areas; general academic transfer programs; campuses provided; limitations.
85-964.	Community colleges; academic course instruction authorized.
85-965.	Community college area; education programs; contract to provide.
85-966.	Sections, how construed.
85-966.01.	Role and mission; legislative change; conditions.
85-967.	Repealed. Laws 1991, LB 663, § 136.
	(c) POSTSECONDARY EDUCATION INFORMATION SYSTEM
85-968.	Transferred to section 85-1421.
85-969.	Transferred to section 85-1422.
85-970.	Transferred to section 85-1423.

## UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section	
85-971.	Repealed. Laws 1994, LB 683, § 33.
85-972.	Repealed. Laws 1991, LB 663, § 136.
85-973.	Repealed. Laws 1994, LB 683, § 33.
85-974.	Transferred to section 85-1424.
85-975.	Transferred to section 85-1425.
85-976.	Transferred to section 85-1426.
85-977.	Repealed. Laws 1994, LB 683, § 33.
85-978.	Repealed. Laws 1994, LB 683, § 33.
85-979.	Transferred to section 85-1427.

### (d) STATE SCHOLARSHIP AWARD PROGRAM

85-980.	Repealed. Laws 2003, LB 574, § 45.
85-980.01.	Repealed. Laws 2003, LB 574, § 45.
85-981.	Repealed. Laws 2003, LB 574, § 45.
85-982.	Repealed. Laws 2003, LB 574, § 45.
85-982.01.	Repealed. Laws 2003, LB 574, § 45.
85-983.	Repealed. Laws 2003, LB 574, § 45.
85-984.	Repealed. Laws 2003, LB 574, § 45.
85-985.	Repealed. Laws 2003, LB 574, § 45.
85-986.	Repealed. Laws 2003, LB 574, § 45.
85-987.	Repealed. Laws 2003, LB 574, § 45.
85-988.	Repealed. Laws 2003, LB 574, § 45.
85-989.	Repealed. Laws 2003, LB 574, § 45.
85-990.	Repealed. Laws 2003, LB 574, § 45.
85-991.	Repealed. Laws 2003, LB 574, § 45.
85-992.	Repealed. Laws 2003, LB 574, § 45.
85-993.	Transferred to section 85-982.01.
85-993.01.	Repealed. Laws 2003, LB 574, § 45.
85-994.	Repealed. Laws 2003, LB 574, § 45.
85-995.	Repealed. Laws 2003, LB 574, § 45.
85-996.	Repealed. Laws 2003, LB 574, § 45.
85-997.	Repealed. Laws 2003, LB 574, § 45.
85-998.	Repealed. Laws 1993, LB 505, § 45.
85-999.	Repealed. Laws 2003, LB 574, § 45.
85-999.01.	Repealed. Laws 2003, LB 574, § 45.
85-9,100.	Repealed. Laws 2003, LB 574, § 45.
85-9,101.	Repealed. Laws 2003, LB 574, § 45.
85-9,102.	Repealed. Laws 2003, LB 574, § 45.
85-9,102.01.	Repealed. Laws 2003, LB 574, § 45.

### (e) PROGRAM REVIEW

85-9,103.	Repealed. Laws 1991, LB 663, § 138.
85-9,104.	Repealed. Laws 1991, LB 663, § 138.
85-9,105.	Repealed. Laws 1991, LB 663, § 138.
85-9,106.	Repealed. Laws 1991, LB 663, § 138.
85-9,107.	Repealed. Laws 1991, LB 663, § 138.
85-9,108.	Repealed. Laws 1991, LB 663, § 138.
85-9,109.	Repealed. Laws 1991, LB 663, § 138.

### (f) ATHLETIC GRANT-IN-AID

85-9,110.	Public postsecondary educational institution; athletic grant-in-aid; prohibited acts.
-----------	---

### (g) LEGISLATIVE STUDY

85-9,111.	Repealed. Laws 1991, LB 663, § 136.
85-9,112.	Repealed. Laws 1991, LB 663, § 136.
85-9,113.	Repealed. Laws 1991, LB 663, § 136.
85-9,114.	Repealed. Laws 1991, LB 663, § 136.
85-9,115.	Repealed. Laws 1991, LB 663, § 136.
85-9,116.	Repealed. Laws 1991, LB 663, § 136.

**POSTSECONDARY EDUCATION**

Section

(h) SCHOLARSHIP ASSISTANCE PROGRAM

- 85-9,117. Repealed. Laws 2003, LB 574, § 45.
- 85-9,118. Repealed. Laws 2003, LB 574, § 45.
- 85-9,119. Repealed. Laws 2003, LB 574, § 45.
- 85-9,119.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,120. Repealed. Laws 2003, LB 574, § 45.
- 85-9,121. Repealed. Laws 2003, LB 574, § 45.
- 85-9,122. Repealed. Laws 2003, LB 574, § 45.
- 85-9,123. Repealed. Laws 2003, LB 574, § 45.
- 85-9,124. Repealed. Laws 2003, LB 574, § 45.
- 85-9,125. Repealed. Laws 1993, LB 505, § 45.
- 85-9,126. Repealed. Laws 2003, LB 574, § 45.
- 85-9,127. Repealed. Laws 2003, LB 574, § 45.
- 85-9,128. Repealed. Laws 2003, LB 574, § 45.
- 85-9,129. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,130.02. Repealed. Laws 2003, LB 574, § 45.
- 85-9,131. Repealed. Laws 2003, LB 574, § 45.
- 85-9,132. Repealed. Laws 2003, LB 574, § 45.
- 85-9,132.01. Repealed. Laws 2003, LB 574, § 45.

(i) FINANCIAL AID

- 85-9,133. Legislative findings.
- 85-9,134. Colleges and universities; prohibited acts.
- 85-9,135. Student; right to amount withheld.
- 85-9,136. Attorney General; duties.
- 85-9,137. College or university; violation; liability.
- 85-9,138. Remedies; cumulative.
- 85-9,139. Sections; prospective application.
- 85-9,139.01. Federal State Postsecondary Review Program; professional program, defined.
- 85-9,139.02. Participants under federal loan programs; default cost fee; reimbursement; procedure; administrative fee.
- 85-9,139.03. Student Loan Default Fee Revolving Fund; created; use; investment.

(j) POSTSECONDARY EDUCATION AWARD PROGRAM ACT

- 85-9,140. Repealed. Laws 2003, LB 574, § 45.
- 85-9,141. Repealed. Laws 2003, LB 574, § 45.
- 85-9,142. Repealed. Laws 2003, LB 574, § 45.
- 85-9,142.01. Repealed. Laws 2003, LB 574, § 45.
- 85-9,143. Repealed. Laws 2003, LB 574, § 45.
- 85-9,144. Repealed. Laws 2003, LB 574, § 45.
- 85-9,145. Repealed. Laws 2003, LB 574, § 45.
- 85-9,146. Repealed. Laws 2003, LB 574, § 45.
- 85-9,147. Repealed. Laws 2003, LB 574, § 45.
- 85-9,148. Repealed. Laws 2003, LB 574, § 45.
- 85-9,149. Repealed. Laws 2003, LB 574, § 45.
- 85-9,150. Repealed. Laws 2003, LB 574, § 45.
- 85-9,151. Repealed. Laws 2003, LB 574, § 45.
- 85-9,152. Repealed. Laws 2003, LB 574, § 45.
- 85-9,153. Repealed. Laws 2003, LB 574, § 45.
- 85-9,154. Repealed. Laws 2003, LB 574, § 45.
- 85-9,155. Repealed. Laws 2003, LB 574, § 45.
- 85-9,156. Repealed. Laws 1993, LB 505, § 45.
- 85-9,157. Repealed. Laws 2003, LB 574, § 45.
- 85-9,158. Repealed. Laws 2003, LB 574, § 45.
- 85-9,159. Repealed. Laws 2003, LB 574, § 45.
- 85-9,160. Repealed. Laws 2003, LB 574, § 45.
- 85-9,161. Repealed. Laws 2003, LB 574, § 45.
- 85-9,162. Repealed. Laws 2003, LB 574, § 45.

§ 85-901 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section

(k) TRANSITION COORDINATING COMMISSION  
FOR POSTSECONDARY EDUCATION

- 85-9,163. Repealed. Laws 1991, LB 663, § 137.
- 85-9,164. Repealed. Laws 1991, LB 663, § 137.
- 85-9,165. Repealed. Laws 1991, LB 663, § 137.

(l) NEBRASKA EQUAL OPPORTUNITY IN POSTSECONDARY EDUCATION ACT

- 85-9,166. Act, how cited.
- 85-9,167. Terms, defined.
- 85-9,168. Legislative findings; discriminatory practices enumerated.
- 85-9,169. Rules and regulations; governing boards; duties.
- 85-9,170. Violation; complaint; filing; disposition; procedure; governing board; duties.
- 85-9,171. Disposition of complaint; claimant; acceptance.
- 85-9,172. Disposition of complaint; claimant; rejection; court action authorized.
- 85-9,173. Complaint; failure of governing board to act; claimant's remedies.
- 85-9,174. Violation; complaint; prerequisite to other remedy.
- 85-9,175. Nebraska Fair Employment Practice Act; complaint; applicability.
- 85-9,176. Act; how construed.

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

- 85-9,177. Act, how cited.
- 85-9,178. Legislative findings and intent.
- 85-9,179. Endowed scholarship funds; use; purpose.
- 85-9,180. Appropriations; use.
- 85-9,181. Funds; use; administration; manner.
- 85-9,182. Awards; committee; determination.

(n) EDUCATION ROUNDTABLE

- 85-9,183. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,184. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,185. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,186. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,187. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,188. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.
- 85-9,189. Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.

(a) GENERAL PROVISIONS

**85-901 Eye protective devices; required; when; term, defined; Commissioner of Education; duties.**

(1) Every student and teacher in colleges, universities, or other postsecondary educational institutions shall wear appropriate industrial-quality eye protective devices at all times while participating in or observing the following courses of instruction:

(a) Vocational, technical, industrial arts, chemical, or chemical-physical, involving exposure to:

- (i) Hot molten metals or other molten materials;
- (ii) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (iii) Heat treatment, tempering, or kiln firing of any metal or other materials;
- (iv) Gas or electric arc welding or other forms of welding processes;
- (v) Repair or servicing of any vehicle; or
- (vi) Caustic or explosive materials; and

(b) Chemical, physical, or combined chemical-physical laboratories involving caustic or explosive materials, hot liquids or solids, injurious radiations, or other hazards not enumerated.

Such devices may be furnished by the postsecondary educational institution for all students and teachers, purchased and sold at cost to students and teachers, or made available for a moderate rental fee and shall be furnished for all visitors to shops and laboratories of such institutions.

(2) For purposes of this section, unless the context otherwise requires, industrial-quality eye protective devices means devices which meet the standard of the American National Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1(1979) as approved by the American National Standards Institute, Inc.

(3) The Commissioner of Education shall prepare and circulate to each public and private postsecondary educational institution in this state instructions and recommendations for implementing the eye safety provisions of this section.

**Source:** Laws 1996, LB 900, § 1085.

**85-902 Information on meningococcal disease; requirements.**

(1) Beginning with school year 2003-04, each postsecondary educational institution shall provide to each newly enrolled student who will reside in oncampus housing and the student's parent or guardian: (a) Detailed information on the risks associated with the potentially fatal meningococcal disease; (b) the availability and effectiveness of a vaccine against the disease; (c) a recommendation that each student receive the meningococcal vaccination; and (d) information on the availability of an indigent patient fund to assist qualified persons with the cost of the vaccine.

(2) Each postsecondary educational institution shall request a confirmation signed by the student, parent, or guardian that the information provided has been received and reviewed.

**Source:** Laws 2003, LB 513, § 1.

**85-902.01 Repealed. Laws 1991, LB 663, § 136.**

**85-903 Repealed. Laws 1991, LB 663, § 137.**

**85-904 Repealed. Laws 1991, LB 663, § 137.**

**85-905 Repealed. Laws 1991, LB 663, § 137.**

**85-906 Repealed. Laws 1991, LB 663, § 137.**

**85-907 Repealed. Laws 1991, LB 663, § 137.**

**85-908 Repealed. Laws 1991, LB 663, § 137.**

**85-909 Repealed. Laws 1991, LB 663, § 137.**

**85-910 Repealed. Laws 1991, LB 663, § 137.**

**85-910.01 Repealed. Laws 1991, LB 663, § 136.**

**85-911 Repealed. Laws 1991, LB 663, § 136.**

**85-912 Repealed. Laws 1991, LB 663, § 136.**

**85-913 Repealed. Laws 1991, LB 663, § 137.**

**85-914 Repealed. Laws 1987, LB 16, § 2.**

**85-915 Repealed. Laws 1991, LB 663, § 137.**

**85-916 Repealed. Laws 1984, LB 290, § 9.**

**85-916.01 Repealed. Laws 1991, LB 663, § 137.**

**85-916.02 Repealed. Laws 1991, LB 663, § 137.**

(b) ROLE AND MISSION ASSIGNMENTS

**85-917 Legislative intent.**

The Legislature hereby declares that it is the intent and purpose of sections 79-741, 79-744, 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511 to provide statements of role and mission for the state's systems and institutions of postsecondary education which will:

- (1) Provide for a coordinated state system of postsecondary education;
- (2) Provide for the maintenance and development of quality postsecondary educational programs and services for all citizens in all regions of the state;
- (3) Insure student and community access to comprehensive educational programs;
- (4) Limit unnecessary program and facility duplication through a coordinated planning and review process;
- (5) Encourage statewide long-term academic and fiscal planning for postsecondary education in the state;
- (6) Establish a legislative review process to insure that (a) role and mission statements are updated as necessary and (b) postsecondary institutions are complying with role and mission assignments and are serving a valuable purpose to the state within their current role and mission assignments; and
- (7) Provide a mechanism for (a) implementing an extensive change in the scope, role, and mission of a campus, (b) closing a campus, (c) merging campuses, and (d) changing a campus to serve a completely different public purpose.

**Source:** Laws 1978, LB 756, § 1; Laws 1984, LB 981, § 18; Laws 1996, LB 900, § 1080.

**85-918 Definitions; where found.**

For purposes of sections 85-917 to 85-966, unless the context otherwise requires, the definitions found in sections 85-919 to 85-932.01 shall be used.

**Source:** Laws 1978, LB 756, § 2; Laws 1993, LB 239, § 8.

**85-919 Instructional activities, defined.**

Instructional activities shall mean those degree-credit and non-degree-credit courses and programs delivered to complete specific degree and nondegree learner objectives.

**Source:** Laws 1978, LB 756, § 3.

**85-920 Research activities, defined.**

Research activities shall mean those activities intended to create new knowledge or provide for the application of existing or newly created knowledge. Research activities may be carried out in conjunction with a system or area's instructional program or as a separately identifiable activity.

**Source:** Laws 1978, LB 756, § 4.

**85-921 Public service activities, defined.**

Public service activities shall mean those programs established to make available to the public the particular resources of a system, area, or institution for the purpose of responding to a statewide, regional, or community need. Within this category may be included the following activities: (1) Direct patient care; (2) health care supportive services; (3) community services; (4) cooperative agricultural extension; (5) public broadcasting services; (6) cultural, recreational, and personal development activities; (7) economic development activities; and (8) continuing education for occupations and professions. Adult, basic, and continuing education programs or services shall not be included in the subcategory of community services.

**Source:** Laws 1978, LB 756, § 5; Laws 1991, LB 663, § 89; Laws 1993, LB 239, § 10.

**85-922 Program responsibility, defined.**

Program responsibility shall mean a system, area, or institution having designated statewide or regional administrative, planning, and academic responsibility for a general or specific program area.

**Source:** Laws 1978, LB 756, § 6.

**85-923 Cooperative program delivery, defined.**

Cooperative program delivery shall mean the provision for two or more systems, areas, or institutions to participate in the planning or delivery of a program or service in a specific or general area; with one system, area, or institution having administrative and academic responsibility for the program.

**Source:** Laws 1978, LB 756, § 7.

**85-924 Regional program responsibility, defined.**

Regional program responsibility shall mean an identifiable geographic area for service delivery by a system, area, or institution. The intrastate or interstate area or region serves as the base for justifying existing and proposed new or expanded program responsibilities.

**Source:** Laws 1978, LB 756, § 8.

**85-925 Comprehensive degree offerings, defined.**

Comprehensive degree offerings shall mean the awarding by a system, area, or institution of degrees, including but not limited to associate, bachelor's, master's, specialist, or doctorate, in a variety of academic or vocational program areas.

**Source:** Laws 1978, LB 756, § 9.

**85-926 General academic transfer programs, defined.**

General academic transfer programs shall mean those one-year or two-year degree-credit programs, at the associate degree level or below including liberal arts and sciences degrees or courses, intended by the offering institution for transfer into a baccalaureate program. Programs in this category may include the award of a formal degree upon completion of the program.

**Source:** Laws 1978, LB 756, § 10; Laws 1993, LB 239, § 11.

**85-927 Applied technology and occupational education, defined.**

Applied technology and occupational education shall mean those instructional programs at the associate degree level or below including associate of applied science degrees, diplomas, certificates, and course work intended to prepare individuals for immediate entry into a specific occupation or career, to upgrade skills, or to acquire new skills. Programs in this category may include the award of a formal degree, diploma, or certificate upon completion of the program.

**Source:** Laws 1978, LB 756, § 11; Laws 1993, LB 239, § 12.

**85-928 Baccalaureate general academic, defined.**

Baccalaureate general academic shall mean those degree programs intended by an institution to prepare an individual to function in a variety of different career areas or to prepare such individual for further academic study. Programs at this level shall allow an individual to acquire a general education at the baccalaureate level in arts, sciences, and humanities.

**Source:** Laws 1978, LB 756, § 12.

**85-929 Baccalaureate occupational, defined.**

Baccalaureate occupational shall mean those degree programs intended by an institution to prepare an individual for a specific occupation or career. Such programs include but are not limited to: (1) Agriculture and natural resources; (2) communications; (3) business and management; (4) computer and information sciences; (5) home economics; (6) fine and applied arts; and (7) specific areas in the social sciences.

**Source:** Laws 1978, LB 756, § 13.

**85-930 Baccalaureate professional, defined.**

Baccalaureate professional shall mean those degree programs intended by an institution to prepare an individual for certification or licensure by a national-, regional-, or state-level certifying or licensing agency. Such programs include but are not limited to: (1) Engineering; (2) education; (3) allied health professions; (4) nursing; and (5) architecture.

**Source:** Laws 1978, LB 756, § 14.

**85-931 Graduate degree programs, defined.**

Graduate degree programs shall mean those programs for which the following degrees are awarded:

(1) First professional degree being the first earned degree in the following fields: (a) Dentistry; (b) medicine, general; (c) optometry; (d) osteopathic medicine; (e) pharmacy; (f) podiatry; (g) veterinary medicine; (h) chiropractic; (i) law, general; (j) theology, general; and (k) architecture, general;

(2) Master's degree being the earned degree carrying the title Master. The master's degree is the first advanced graduate degree conferred in professional programs and general academic and occupational programs.

Master's degree professional programs include but are not limited to: (a) Engineering; (b) education; (c) allied health professions; (d) nursing; (e) architecture, specialties; (f) community and regional planning; (g) dentistry; (h) medicine, specialties; (i) optometry; (j) osteopathic medicine; (k) pharmacy; (l) podiatry; (m) social work; (n) veterinary medicine; (o) chiropractic; (p) law, specialties; and (q) theology, specialties.

Master's degree programs in general academic and occupational areas include but are not limited to: (a) Mathematics; (b) languages; (c) biological and physical sciences; (d) letters; (e) fine arts; (f) social sciences; (g) agriculture and natural resources; (h) communications; (i) business and management; (j) computer and information sciences; (k) home economics; and (l) fine and applied arts; and

(3) Doctoral degree being an earned academic degree conveying the title of Doctor. Doctoral degrees include but are not limited to: Doctor of Philosophy; Doctor of Education; and Doctor of Arts.

**Source:** Laws 1978, LB 756, § 15; Laws 1994, LB 683, § 7.

**85-932 Continuing education for occupations and professions, defined.**

Continuing education for occupations and professions shall mean training or education that is not a part of a terminal degree or certificate program, but is related to an individual's existing or proposed area of occupation or profession.

**Source:** Laws 1978, LB 756, § 16.

**85-932.01 Foundations education, defined.**

Foundations education shall mean education which includes remedial and developmental programs, adult basic education, general education development, English as a second language, compensatory education, and refresher courses.

**Source:** Laws 1993, LB 239, § 9.

**85-933 Expenditures in conflict with role and mission assignments; prohibited.**

No funds generated or received from a General Fund appropriation, state aid assistance program, or receipts from a tax levy authorized by statute shall be expended in support of programs or activities which are in conflict with the role and mission assignments applicable to the University of Nebraska, state

§ 85-933            **UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

colleges, or community colleges under sections 79-741, 79-744, 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1978, LB 756, § 17; Laws 1979, LB 187, § 261; Laws 1996, LB 900, § 1081.

**85-934 Nondegree recreational and avocational courses; self-supporting; exception.**

All direct costs of nondegree recreational and avocational courses shall, on the average, be self-supporting through student tuition and fee charges or designated grants or contracts by July 1, 1979. This section shall not apply to the Cooperative Extension Service of the University of Nebraska.

**Source:** Laws 1978, LB 756, § 18.

**85-935 University of Nebraska system; role and mission assignments; Board of Regents; adopt policies.**

The role and mission assignments enumerated in sections 85-936 to 85-948 shall apply to the University of Nebraska system and its campuses. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections. The Board of Regents of the University of Nebraska shall adopt and promulgate policies and procedures necessary to assure compliance with sections 85-917 to 85-966.

**Source:** Laws 1978, LB 756, § 19; Laws 1989, LB 247, § 23; Laws 1991, LB 663, § 90; Laws 1993, LB 239, § 13.

**85-936 University of Nebraska; public service activities; statewide responsibility.**

The University of Nebraska shall have statewide responsibility for public service activities.

**Source:** Laws 1978, LB 756, § 20.

**85-937 University of Nebraska; degree programs; sole responsibility.**

The University of Nebraska shall have sole responsibility for doctoral degree programs, first professional degree programs, cooperative agricultural extension programs, and other degree programs and services specifically provided for by law. The first professional degrees, as defined by the Integrated Postsecondary Education Data System, offered by the University of Nebraska shall be medicine, law, dentistry, and pharmacy. In addition, the University of Nebraska may, with approval by the Coordinating Commission for Postsecondary Education, offer a first professional degree in architecture.

**Source:** Laws 1978, LB 756, § 21; Laws 1988, LB 927, § 2; Laws 1994, LB 683, § 8.

**Cross References**

**Integrated Postsecondary Education Data System**, see sections 85-1412 and 85-1424.

**85-938 University of Nebraska; maintain graduate college and faculty status.**

The University of Nebraska is encouraged to maintain its existing single university-wide graduate college and maintain for its graduate faculty all rights, privileges, and responsibilities associated with graduate faculty status.

**Source:** Laws 1978, LB 756, § 22.

**85-939 University of Nebraska; continuing education services; statewide responsibility.**

The University of Nebraska shall have statewide responsibility for continuing education services at the baccalaureate, graduate, and professional levels.

**Source:** Laws 1978, LB 756, § 23.

**85-940 Repealed. Laws 1991, LB 663, § 136.**

**85-941 University of Nebraska; certain graduate programs; baccalaureate professional programs; agriculture and natural resources programs; responsibilities.**

The University of Nebraska shall have sole responsibility for all graduate programs at the specialist and master's degree level and all baccalaureate professional programs throughout the public sector of postsecondary education in Nebraska, with the exception of programs in education and other areas authorized by the Legislature at the state colleges. The University of Nebraska shall have primary responsibility for instruction in agriculture and natural resources and primary statewide responsibility for research and public service in agriculture and natural resources. All baccalaureate and baccalaureate transfer programs in agriculture and natural resources initiated after July 1, 1978, at state colleges and community colleges shall be conducted in cooperation with the University of Nebraska.

**Source:** Laws 1978, LB 756, § 25; Laws 1984, LB 970, § 1; Laws 1991, LB 6, § 3.

**85-942 University of Nebraska; mission; priorities.**

It is recognized that as the state's land grant institution the University of Nebraska is engaged in instruction, research, and public service, and that these three parts of the university's mission are interdependent. However, when viewed in its entirety, the university's first priority shall be undergraduate instruction, the university's second priority shall be graduate and professional instruction and research, and the university's third priority shall be public service.

**Source:** Laws 1978, LB 756, § 26.

**85-943 University of Nebraska; associate degree, diploma, and certificate-in-course; programs authorized; conditions; exception.**

The University of Nebraska may continue to offer the associate degree, diploma, and certificate-in-course in agriculturally related fields, radiologic technology, radiation therapy, nuclear medicine technology, and engineering technology if approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 upon the demonstration of a compelling need and unique capacity by the university to offer such programs. The University of Nebraska shall not offer associate degrees or less than

associate-degree-level diplomas or certificates-in-course in other than authorized and approved programs.

**Source:** Laws 1978, LB 756, § 27; Laws 1988, LB 890, § 1; Laws 1991, LB 663, § 91; Laws 2003, LB 7, § 3.

**85-944 University of Nebraska; health professions programs; priorities.**

The University of Nebraska's programs in the health professions shall serve the health care needs of the State of Nebraska. The University of Nebraska, in cooperation with state and regional health planning agencies, shall conduct a continuing study of the state's health care needs and adjust program services to reflect changing conditions. The University of Nebraska's health professions programs shall have as their first priority the training of physicians, dentists, nurses, pharmacists, and allied health professionals. Special emphasis and priority shall be placed on education and training of physicians for the primary care specialties of: (1) Family practice; (2) internal medicine; (3) pediatrics; and (4) obstetrics-gynecology. The second priority in the health professions programs shall be the provision of continuing education services for the health professions. The third priority for the health professions programs shall be research and public services in those areas related to the health professions.

**Source:** Laws 1978, LB 756, § 28.

**85-945 University of Nebraska at Omaha; urban-oriented programs; primary responsibility; doctoral programs; authorized; when.**

The University of Nebraska at Omaha shall continue to be the primary unit within the University of Nebraska for urban-oriented programs. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Omaha may offer doctoral programs upon demonstration of compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414. There shall be no duplication of administrative responsibility for any urban-oriented program among units of the university.

**Source:** Laws 1978, LB 756, § 29; Laws 1991, LB 663, § 92.

**85-946 University of Nebraska-Lincoln; doctoral and postdoctoral programs; primary responsibility; exception.**

The University of Nebraska-Lincoln shall continue to be the primary unit within the University of Nebraska for doctoral and postdoctoral programs except in health-related disciplines. There shall be no duplication of administrative responsibility for any doctoral or postdoctoral program among units of the university.

**Source:** Laws 1978, LB 756, § 30.

**85-946.01 University of Nebraska-Lincoln; research; primary responsibility; other research activities.**

The University of Nebraska-Lincoln shall be the primary public institution in the state for research. The research activities of the University of Nebraska at Omaha shall primarily support graduate programs and otherwise be directly related to the enhancement of the instructional programs and to the profession-

al development of the faculty. The research activities of the University of Nebraska at Kearney shall be directly related to the enhancement of the instructional programs and to the professional development of the faculty. The research activities of the University of Nebraska Medical Center shall be health-related.

**Source:** Laws 1991, LB 663, § 95.

**85-947 University of Nebraska Medical Center; health-related programs; primary responsibility.**

The University of Nebraska Medical Center shall continue to be the primary unit within the University of Nebraska for programs in the health-related disciplines. There shall be no duplication of administrative responsibility for any health-related program among units of the university.

**Source:** Laws 1978, LB 756, § 31.

**85-947.01 University of Nebraska at Kearney; programs authorized.**

The University of Nebraska at Kearney may maintain the baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs which Kearney State College maintained prior to July 1, 1991. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Kearney may award the master's degree in business administration. Subject to approval by the Board of Regents of the University of Nebraska, the University of Nebraska at Kearney may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

**Source:** Laws 1978, LB 756, § 39; Laws 1984, LB 970, § 4; R.S.1943, (1987), § 85-955; Laws 1989, LB 247, § 26; Laws 1991, LB 663, § 93.

**85-948 University of Nebraska; health programs; sole responsibility; exception.**

The University of Nebraska shall have sole responsibility for baccalaureate, first professional, master's, and doctoral programs in the health professions to include medicine, dentistry, pharmacy, nursing, and the allied health professions, with the exception of the baccalaureate programs in the allied health professions established at the state colleges prior to June 1, 1977.

**Source:** Laws 1978, LB 756, § 32; Laws 1981, LB 320, § 3; Laws 1988, LB 890, § 2; Laws 1989, LB 247, § 25; Laws 1991, LB 663, § 94.

**85-949 State college system; role and mission assignments; board of trustees; adopt policies.**

The role and mission assignments enumerated in sections 85-950 to 85-958 shall apply to the state college system and its institutions. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections. The Board of Trustees of the Nebraska State Colleges shall adopt and promulgate policies and procedures necessary to assure compliance

§ 85-949 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

with sections 79-741, 79-744, 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1978, LB 756, § 33; Laws 1996, LB 900, § 1082.

**85-950 State colleges; public service and continuing education activities; regional responsibility; exception.**

The state colleges shall have regional responsibility for public service and continuing education activities, except in areas where such colleges have the ability to provide a particular service on a statewide basis.

**Source:** Laws 1978, LB 756, § 34.

**85-951 State colleges; priorities.**

The state colleges, collectively and individually, shall have as their first instructional priority the provision of baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs in education. The colleges' second instructional priority shall be master's programs in education and other areas authorized by the Legislature. Such colleges' third priority shall be the continuation and development of applied research and public service activities. The colleges' fourth priority shall be the awarding of the specialist degree in education.

**Source:** Laws 1978, LB 756, § 35; Laws 1984, LB 970, § 2.

**85-952 State colleges; programs permitted; limitations.**

The state colleges may continue to deliver academic transfer and preprofessional associate degree programs for which a degree may be awarded if approved by the Board of Trustees of the Nebraska State Colleges and the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414 upon demonstration of compelling need and unique capacity of the state colleges to offer such programs. The state colleges shall not independently award the associate degree, diploma, or certificate for applied technology education programs.

**Source:** Laws 1978, LB 756, § 36; Laws 1991, LB 663, § 96; Laws 1993, LB 239, § 14.

**85-953 State colleges; research activities permitted.**

The state colleges may continue to pursue and develop applied research programs related to their instructional and regional responsibilities. Research activities of the state colleges shall be directly related to the enhancement of the instructional programs and to the professional development of the faculty.

**Source:** Laws 1978, LB 756, § 37; Laws 1991, LB 663, § 97.

**85-954 State colleges; master's degree programs in education; graduate business courses; joint advisory committee; established.**

The colleges are encouraged to develop master's level curriculum in educational technology and to explore innovative new areas for master's level instruction in the field of education. The state colleges may deliver, in consultation with the University of Nebraska, graduate courses in business to meet regional needs.

The state colleges and the University of Nebraska shall establish a joint advisory committee to ensure coordinated program development and delivery in offering the master's degree in business administration.

**Source:** Laws 1978, LB 756, § 38; Laws 1984, LB 970, § 3; Laws 1989, LB 247, § 27.

**85-955 Transferred to section 85-947.01.**

**85-956 Chadron State College; programs authorized.**

Chadron State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's western region. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Chadron State College may independently award the master's degree in business administration. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Chadron State College may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

**Source:** Laws 1978, LB 756, § 40; Laws 1984, LB 970, § 5; Laws 1991, LB 663, § 98.

**85-957 Peru State College; programs authorized.**

Peru State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's southeast region. Peru's cooperative master's degree program in education with the university may be maintained. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Peru State College may offer a Master of Science degree in organizational management with a focus in entrepreneurial and economic development.

**Source:** Laws 1978, LB 756, § 41; Laws 2006, LB 962, § 4.

**85-958 Wayne State College; programs authorized.**

Wayne State College may maintain its existing baccalaureate general academic, baccalaureate occupational, and baccalaureate professional degree programs and shall limit new baccalaureate degree programs to the needs of its unique service area generally defined as the state's northeast region. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Wayne State College may independently award the master's degree in business administration. Subject to approval by the Board of Trustees of the Nebraska State Colleges, Wayne State College may offer other master's degree programs upon demonstration of a compelling need in disciplines in which it has a demonstrated capacity as authorized and approved by the Coordinating Commission for Postsecondary Education pursuant to sections 85-1413 and 85-1414.

**Source:** Laws 1978, LB 756, § 42; Laws 1984, LB 970, § 6; Laws 1991, LB 663, § 99.

**85-959 Community colleges; role and mission assignments.**

The role and mission assignments enumerated in sections 85-960 to 85-965 shall apply to the community college system and its areas and campuses. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections.

**Source:** Laws 1978, LB 756, § 43.

**85-960 Community colleges; public service activities; responsibility.**

The community colleges shall be responsible for public service activities within each area.

**Source:** Laws 1978, LB 756, § 44.

**85-960.01 Community colleges; applied research activities permitted.**

Applied research activities of the community college areas shall be directly related to the enhancement of the instructional programs, student achievement, institutional effectiveness, public service activities, and the professional development of the faculty.

**Source:** Laws 1991, LB 663, § 100; Laws 1993, LB 239, § 15.

**85-960.02 Community colleges; foundations education.**

The community college areas shall serve as the primary public postsecondary institutions for foundations education.

**Source:** Laws 1991, LB 663, § 101; Laws 1993, LB 239, § 16.

**85-961 Community colleges; responsibility in less than baccalaureate degree program areas.**

The community colleges shall have, except in specified program areas authorized by statute and the Coordinating Commission for Postsecondary Education, sole responsibility for the award of associate degrees, diplomas, and certificates in less than baccalaureate degree program areas approved by the commission pursuant to sections 85-1413 and 85-1414.

**Source:** Laws 1978, LB 756, § 45; Laws 1991, LB 663, § 102.

**85-962 Community colleges; legislative intent; instructional and service priorities.**

It is the intent of the Legislature that the community colleges shall be student-centered, open-access institutions primarily devoted to quality instruction and public service, providing counseling and other student services intended to promote the success of a diverse student population, particularly those who have been traditionally underserved in other educational settings. The community colleges, individually and collectively, shall have as their first instructional and service priority applied technology and occupational education and, when necessary, foundations education. The second instructional and service priority of the community colleges shall be transfer education, including general academic transfer programs, or applied technology and occupational programs which may be applicable to the first two years of a bachelor's degree program, and, when necessary, foundations education. The third instructional and service priority of the community colleges shall be

public service, particularly adult continuing education for occupations and professions, economic and community development focused on customized occupational assessment and job training programs for businesses and communities, and avocational and personal development courses. The fourth instructional and service priority of the community colleges shall be applied research.

**Source:** Laws 1978, LB 756, § 46; Laws 1991, LB 663, § 103; Laws 1993, LB 239, § 17.

**85-963 Community college areas; general academic transfer programs; campuses provided; limitations.**

The community college areas may provide general academic transfer programs at the following campuses: Southeast Community College Area at the Fairbury-Beatrice Campus; Central Community College Area at the Columbus Campus; Metropolitan Community College Area at the Fort Omaha Campus; Mid-Plains Community College Area at the McCook and North Platte Campuses; Northeast Community College Area at the Norfolk Campus; and Western Community College Area at the Scottsbluff Campus.

In conjunction with and consistent with its determinations regarding transfers of credit, admission standards, and remedial programs pursuant to section 85-1413, the Coordinating Commission for Postsecondary Education may authorize any or all of the campuses of community college areas not listed in this section to also provide general academic transfer programs.

The delivery of general academic transfer program services shall be limited to those areas and campuses specifically provided for by this section or the commission. The community college areas are encouraged to work in cooperation with the University of Nebraska and the state colleges for the articulation of general academic transfer programs of the six community college areas.

**Source:** Laws 1978, LB 756, § 47; Laws 1981, LB 320, § 4; Laws 1984, LB 993, § 1; Laws 1991, LB 663, § 104; Laws 1994, LB 683, § 9.

**85-964 Community colleges; academic course instruction authorized.**

The community colleges may provide such academic course instruction as may be necessary to support applied technology education and academic transfer programs.

**Source:** Laws 1978, LB 756, § 48; Laws 1993, LB 239, § 18.

**85-965 Community college area; education programs; contract to provide.**

Any community college area or institution may contract to provide for the delivery of education programs within institutions operated by any state agency or within any geographic area administered by a federal agency or tribal authority.

**Source:** Laws 1978, LB 756, § 49.

**85-966 Sections, how construed.**

The Legislature acknowledges the provisions of Article VII, sections 10, 13, and 14, of the Constitution of Nebraska. The provisions of sections 85-917 to 85-966.01 reflect the philosophy of the State of Nebraska and shall be acknowledged as such and implemented by the Board of Regents of the University of

§ 85-966 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Nebraska, the Board of Trustees of the Nebraska State Colleges, the board of governors of each community college area, and the Coordinating Commission for Postsecondary Education.

**Source:** Laws 1978, LB 756, § 56; Laws 1991, LB 663, § 105; Laws 1993, LB 239, § 19; Laws 1994, LB 683, § 10.

**85-966.01 Role and mission; legislative change; conditions.**

After January 1, 1995, the Legislature shall not change the role and mission provisions in this section and sections 85-917 to 85-966 unless and until a proposal for such change has first been reviewed by the Coordinating Commission for Postsecondary Education and its recommendations on such proposal have been given to the Legislature pursuant to subdivision (2) of section 85-1412, section 85-1414, or otherwise.

**Source:** Laws 1994, LB 683, § 11; Laws 2003, LB 7, § 4.

**85-967 Repealed. Laws 1991, LB 663, § 136.**

(c) POSTSECONDARY EDUCATION INFORMATION SYSTEM

**85-968 Transferred to section 85-1421.**

**85-969 Transferred to section 85-1422.**

**85-970 Transferred to section 85-1423.**

**85-971 Repealed. Laws 1994, LB 683, § 33.**

**85-972 Repealed. Laws 1991, LB 663, § 136.**

**85-973 Repealed. Laws 1994, LB 683, § 33.**

**85-974 Transferred to section 85-1424.**

**85-975 Transferred to section 85-1425.**

**85-976 Transferred to section 85-1426.**

**85-977 Repealed. Laws 1994, LB 683, § 33.**

**85-978 Repealed. Laws 1994, LB 683, § 33.**

**85-979 Transferred to section 85-1427.**

(d) STATE SCHOLARSHIP AWARD PROGRAM

**85-980 Repealed. Laws 2003, LB 574, § 45.**

**85-980.01 Repealed. Laws 2003, LB 574, § 45.**

**85-981 Repealed. Laws 2003, LB 574, § 45.**

**85-982 Repealed. Laws 2003, LB 574, § 45.**

**85-982.01 Repealed. Laws 2003, LB 574, § 45.**

**85-983 Repealed. Laws 2003, LB 574, § 45.**

- 85-984 Repealed. Laws 2003, LB 574, § 45.
- 85-985 Repealed. Laws 2003, LB 574, § 45.
- 85-986 Repealed. Laws 2003, LB 574, § 45.
- 85-987 Repealed. Laws 2003, LB 574, § 45.
- 85-988 Repealed. Laws 2003, LB 574, § 45.
- 85-989 Repealed. Laws 2003, LB 574, § 45.
- 85-990 Repealed. Laws 2003, LB 574, § 45.
- 85-991 Repealed. Laws 2003, LB 574, § 45.
- 85-992 Repealed. Laws 2003, LB 574, § 45.
- 85-993 Transferred to section 85-982.01.
- 85-993.01 Repealed. Laws 2003, LB 574, § 45.
- 85-994 Repealed. Laws 2003, LB 574, § 45.
- 85-995 Repealed. Laws 2003, LB 574, § 45.
- 85-996 Repealed. Laws 2003, LB 574, § 45.
- 85-997 Repealed. Laws 2003, LB 574, § 45.
- 85-998 Repealed. Laws 1993, LB 505, § 45.
- 85-999 Repealed. Laws 2003, LB 574, § 45.
- 85-999.01 Repealed. Laws 2003, LB 574, § 45.
- 85-9,100 Repealed. Laws 2003, LB 574, § 45.
- 85-9,101 Repealed. Laws 2003, LB 574, § 45.
- 85-9,102 Repealed. Laws 2003, LB 574, § 45.
- 85-9,102.01 Repealed. Laws 2003, LB 574, § 45.

(e) PROGRAM REVIEW

- 85-9,103 Repealed. Laws 1991, LB 663, § 138.
- 85-9,104 Repealed. Laws 1991, LB 663, § 138.
- 85-9,105 Repealed. Laws 1991, LB 663, § 138.
- 85-9,106 Repealed. Laws 1991, LB 663, § 138.
- 85-9,107 Repealed. Laws 1991, LB 663, § 138.
- 85-9,108 Repealed. Laws 1991, LB 663, § 138.
- 85-9,109 Repealed. Laws 1991, LB 663, § 138.

## (f) ATHLETIC GRANT-IN-AID

**85-9,110 Public postsecondary educational institution; athletic grant-in-aid; prohibited acts.**

No public postsecondary educational institution in the State of Nebraska shall, prior to graduation, reduce, cancel, or refuse to renew an athletic grant-in-aid to a student during his or her period of eligibility to compete in intercollegiate athletics solely because of an injury which prevents the student from participating in athletics.

**Source:** Laws 1984, LB 764, § 1.

## (g) LEGISLATIVE STUDY

**85-9,111 Repealed. Laws 1991, LB 663, § 136.**

**85-9,112 Repealed. Laws 1991, LB 663, § 136.**

**85-9,113 Repealed. Laws 1991, LB 663, § 136.**

**85-9,114 Repealed. Laws 1991, LB 663, § 136.**

**85-9,115 Repealed. Laws 1991, LB 663, § 136.**

**85-9,116 Repealed. Laws 1991, LB 663, § 136.**

## (h) SCHOLARSHIP ASSISTANCE PROGRAM

**85-9,117 Repealed. Laws 2003, LB 574, § 45.**

**85-9,118 Repealed. Laws 2003, LB 574, § 45.**

**85-9,119 Repealed. Laws 2003, LB 574, § 45.**

**85-9,119.01 Repealed. Laws 2003, LB 574, § 45.**

**85-9,120 Repealed. Laws 2003, LB 574, § 45.**

**85-9,121 Repealed. Laws 2003, LB 574, § 45.**

**85-9,122 Repealed. Laws 2003, LB 574, § 45.**

**85-9,123 Repealed. Laws 2003, LB 574, § 45.**

**85-9,124 Repealed. Laws 2003, LB 574, § 45.**

**85-9,125 Repealed. Laws 1993, LB 505, § 45.**

**85-9,126 Repealed. Laws 2003, LB 574, § 45.**

**85-9,127 Repealed. Laws 2003, LB 574, § 45.**

**85-9,128 Repealed. Laws 2003, LB 574, § 45.**

**85-9,129 Repealed. Laws 2003, LB 574, § 45.**

**85-9,130 Repealed. Laws 2003, LB 574, § 45.**

**85-9,130.01 Repealed. Laws 2003, LB 574, § 45.**

**85-9,130.02 Repealed. Laws 2003, LB 574, § 45.**

**85-9,131 Repealed. Laws 2003, LB 574, § 45.**

**85-9,132 Repealed. Laws 2003, LB 574, § 45.**

**85-9,132.01 Repealed. Laws 2003, LB 574, § 45.**

(i) FINANCIAL AID

**85-9,133 Legislative findings.**

The Legislature hereby finds and declares that:

(1) Various federal and state student financial aid programs were created by federal and state law to aid financially needy students, not colleges and universities, and are not intended to discriminate on the basis of participation by a student in an intercollegiate athletic program or sport;

(2) Eligibility to receive aid under such programs is based on demonstrated need, and no student meeting such criteria should be deprived of such aid by a college or university solely on the basis of participation by such student in an intercollegiate athletic program or sport;

(3) No college or university, solely on the basis of participation in an intercollegiate athletic program or sport or as a condition to such participation, should compel a student to forego any financial aid to which he or she is entitled;

(4) No person should be denied or compelled to relinquish any benefit created by federal or state law as a condition to participation in an activity that is an integral part of the operation, occupation, or business of a college or university as an educational institution; and

(5) The Legislature has the obligation to enact laws that prohibit unjust discrimination of every variety and form and to provide redress for victims of such discrimination.

**Source:** Laws 1991, LB 69, § 1.

**85-9,134 Colleges and universities; prohibited acts.**

No college or university shall adopt, promulgate, or enforce any rule or regulation that requires a student to forego, relinquish, waive, or surrender any financial aid made available to financially needy students by federal or state law, solely on the basis of or as a condition to participation by such student in an intercollegiate athletic program or sport. This section is not violated if the rule or regulation pertaining to such financial aid applies equally and in the same manner to every student eligible to receive such financial aid irrespective of participation in an intercollegiate athletic program or sport.

**Source:** Laws 1991, LB 69, § 2.

**85-9,135 Student; right to amount withheld.**

Any amounts withheld or obtained from a student by a college or university in violation of sections 85-9,133 to 85-9,139 shall be turned over to such student in accordance with section 85-9,136.

**Source:** Laws 1991, LB 69, § 3.

**85-9,136 Attorney General; duties.**

The Attorney General shall investigate and render a finding when a complaint alleging a violation of sections 85-9,133 to 85-9,139 is brought by any person. Any college or university found by the Attorney General to have violated or to be in violation of sections 85-9,133 to 85-9,139 shall cease such violation immediately and permanently upon being directed by the Attorney General to do so. The Attorney General shall issue such directive in writing within three days of making a finding that a violation has occurred or is occurring. The directive shall include notification that any amount withheld or obtained from any student in violation of sections 85-9,133 to 85-9,139 shall be made available to such student for use in accord with the terms of the particular aid program not more than ten days after issuance of the directive. The Attorney General shall take whatever action is necessary to enforce the directive. The duty of the Attorney General under this section is not discretionary but mandatory.

**Source:** Laws 1991, LB 69, § 4.

**85-9,137 College or university; violation; liability.**

A college or university which subjects or causes to be subjected any student to a rule or regulation adopted, promulgated, or enforced in violation of section 85-9,134 shall be liable to the aggrieved party in an action at law, a suit in equity, or any other proper proceeding for redress. In addition to any other relief granted, an aggrieved party shall be awarded costs and reasonable attorney's fees.

**Source:** Laws 1991, LB 69, § 5.

**85-9,138 Remedies; cumulative.**

The remedies provided in sections 85-9,133 to 85-9,139 shall be cumulative and in addition to any other remedies provided by law.

**Source:** Laws 1991, LB 69, § 6.

**85-9,139 Sections; prospective application.**

The provisions of sections 85-9,133 to 85-9,139 shall have prospective application only and shall apply to any violation occurring after June 1, 1992.

**Source:** Laws 1991, LB 69, § 7.

**85-9,139.01 Federal State Postsecondary Review Program; professional program, defined.**

For purposes of the State Postsecondary Review Program, 20 U.S.C. 1099a, and all regulations and state review standards adopted and promulgated pursuant thereto, professional program shall have the same meaning as first professional degrees as such term is defined in section 85-937.

**Source:** Laws 1995, LB 601, § 1.

**85-9,139.02 Participants under federal loan programs; default cost fee; reimbursement; procedure; administrative fee.**

(1)(a) Each postsecondary educational institution in the State of Nebraska that participates in the Federal Family Education Loan Program or the Federal Direct Student Loan Program, under Title IV of the federal Higher Education

Act of 1965, as amended, shall reimburse the state for its proportionate share of any default cost fee charged to the state by the United States Secretary of Education under the federal act.

(b) Each postsecondary educational institution which (i) is currently in operation, (ii) participated in the Federal Family Education Loan Program or the Federal Direct Student Loan Program, and (iii) for the relevant time period had a cohort default rate equal to or in excess of the percentage which directly triggered the relevant default cost fee charged to the state shall be required to remit an excess default rate fee in addition to its proportionate share of the relevant default cost fee charged to the state. Such excess default rate fee shall be two hundred percent of the institution's proportionate share of the relevant default cost fee.

(c) The balance of the relevant default cost fee charged to the state and not assessed pursuant to subdivision (b) of this subsection shall be assessed to postsecondary educational institutions which are currently in operation and which participated in the Federal Family Education Loan Program or the Federal Direct Student Loan Program for the relevant time period, excluding those institutions subject to assessment pursuant to such subdivision.

(d) Any postsecondary educational institution subject to assessment pursuant to subdivision (c) of this subsection shall not be assessed an amount exceeding the respective institution's proportionate share of the relevant default cost fee charged to the state. Such proportionate share means an amount which, in proportion to the total of the relevant default cost fee charged to the state by the United States Secretary of Education, is equal to the proportion of Federal Family Education Loan Program and Federal Direct Student Loan Program loan default dollar volume attributable to the respective institution to the total of Federal Family Education Loan Program and Federal Direct Student Loan Program loan default dollar volume for all institutions which participated in the Federal Family Education Loan Program and the Federal Direct Student Loan Program for the relevant time period.

(2) The Coordinating Commission for Postsecondary Education shall adopt and promulgate rules and regulations establishing a fee structure for determining the amount of the reimbursement for each institution as provided in subsection (1) of this section.

(3) Any institution with a valid authorization to operate pursuant to the Private Postsecondary Career School Act which has a cohort default rate which triggers state liability pursuant to section 428(n) of the federal Higher Education Act of 1965, as amended, has violated the Private Postsecondary Career School Act. A hearing to determine whether the institution should have its authorization to operate or its agent's permit revoked shall be held in accordance with section 85-1634.

(4) Unless prohibited by federal law, the commission may charge and collect an administrative fee, not to exceed ten percent of the proportionate share of the relevant default cost fee, from any Nebraska postsecondary educational institution to cover the administrative expenses incurred by the commission in carrying out this section.

(5) Notwithstanding any other provision of law to the contrary, the rules and regulations may provide that a postsecondary educational institution may be exempt from the fees or the commission may adjust the fees of an institution if

**§ 85-9,139.02 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

the institution demonstrates that exceptional mitigating circumstances contributed to its high cohort default rate.

**Source:** Laws 1996, LB 29, § 1.

**Cross References**

**Private Postsecondary Career School Act**, see section 85-1601.

**85-9,139.03 Student Loan Default Fee Revolving Fund; created; use; investment.**

(1) The Student Loan Default Fee Revolving Fund is created. The fund shall be under the direction of the Coordinating Commission for Postsecondary Education. The commission shall remit all revenue received from fees charged under section 85-9,139.02 to the State Treasurer for credit to the fund. Expenditures may be made from the fund, after appropriation by the Legislature, for payments to the federal government for relevant default cost fees charged to the State of Nebraska by the United States Secretary of Education or to reimburse the General Fund for any such payments which have been made to the federal government.

(2) If not inconsistent with federal law, up to ten percent of the revenue remitted to the fund may be appropriated and used to defray the administrative expenses of the activities undertaken pursuant to section 85-9,139.02.

(3) Any money in the 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.

**Source:** Laws 1996, LB 29, § 2.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**(j) POSTSECONDARY EDUCATION AWARD PROGRAM ACT**

**85-9,140 Repealed. Laws 2003, LB 574, § 45.**

**85-9,141 Repealed. Laws 2003, LB 574, § 45.**

**85-9,142 Repealed. Laws 2003, LB 574, § 45.**

**85-9,142.01 Repealed. Laws 2003, LB 574, § 45.**

**85-9,143 Repealed. Laws 2003, LB 574, § 45.**

**85-9,144 Repealed. Laws 2003, LB 574, § 45.**

**85-9,145 Repealed. Laws 2003, LB 574, § 45.**

**85-9,146 Repealed. Laws 2003, LB 574, § 45.**

**85-9,147 Repealed. Laws 2003, LB 574, § 45.**

**85-9,148 Repealed. Laws 2003, LB 574, § 45.**

**85-9,149 Repealed. Laws 2003, LB 574, § 45.**

**85-9,150 Repealed. Laws 2003, LB 574, § 45.**

- 85-9,151 Repealed. Laws 2003, LB 574, § 45.  
 85-9,152 Repealed. Laws 2003, LB 574, § 45.  
 85-9,153 Repealed. Laws 2003, LB 574, § 45.  
 85-9,154 Repealed. Laws 2003, LB 574, § 45.  
 85-9,155 Repealed. Laws 2003, LB 574, § 45.  
 85-9,156 Repealed. Laws 1993, LB 505, § 45.  
 85-9,157 Repealed. Laws 2003, LB 574, § 45.  
 85-9,158 Repealed. Laws 2003, LB 574, § 45.  
 85-9,159 Repealed. Laws 2003, LB 574, § 45.  
 85-9,160 Repealed. Laws 2003, LB 574, § 45.  
 85-9,161 Repealed. Laws 2003, LB 574, § 45.  
 85-9,162 Repealed. Laws 2003, LB 574, § 45.

(k) TRANSITION COORDINATING COMMISSION  
 FOR POSTSECONDARY EDUCATION

- 85-9,163 Repealed. Laws 1991, LB 663, § 137.  
 85-9,164 Repealed. Laws 1991, LB 663, § 137.  
 85-9,165 Repealed. Laws 1991, LB 663, § 137.

(l) NEBRASKA EQUAL OPPORTUNITY IN  
 POSTSECONDARY EDUCATION ACT

**85-9,166 Act, how cited.**

Sections 85-9,166 to 85-9,176 shall be known and may be cited as the Nebraska Equal Opportunity in Postsecondary Education Act.

**Source:** Laws 1996, LB 900, § 1086.

**Cross References**

For provisions relating to elementary and secondary schools, see sections 79-2,114 to 79-2,124.

**85-9,167 Terms, defined.**

For purposes of the Nebraska Equal Opportunity in Postsecondary Education Act:

- (1) Educational institution means the University of Nebraska, the state colleges, and the community colleges; and
- (2) Governing board means the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors.

**Source:** Laws 1996, LB 900, § 1087.

**85-9,168 Legislative findings; discriminatory practices enumerated.**

The Legislature finds and declares that it is an unfair or discriminatory practice for any educational institution to discriminate on the basis of sex in any program or activity. Such discriminatory practices include, but are not limited to, the following practices:

(1) Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity, except athletic programs;

(2) Denial of comparable opportunity in intramural and interscholastic athletic programs;

(3) Discrimination among persons in employment and the conditions of such employment; and

(4) The application of any rule which discriminates on the basis of (a) the pregnancy of any person, (b) the marital status of any person, or (c) the condition of being a parent. Rules requiring certification of a physician's diagnosis and such physician's recommendation as to what activities a pregnant person may participate in are permissible. For purposes of this section marital status shall include the condition of being single, married, widowed, or divorced.

**Source:** Laws 1996, LB 900, § 1088.

**85-9,169 Rules and regulations; governing boards; duties.**

The governing boards of educational institutions shall adopt and promulgate rules and regulations needed to carry out the Nebraska Equal Opportunity in Postsecondary Education Act. Governing boards of educational institutions, with the advice of staff, shall formulate activities and programs needed to carry out the act.

**Source:** Laws 1996, LB 900, § 1089.

**85-9,170 Violation; complaint; filing; disposition; procedure; governing board; duties.**

(1) Any person aggrieved by a violation of the Nebraska Equal Opportunity in Postsecondary Education Act or any rule, regulation, or procedure adopted pursuant to the act may file a complaint with the governing board of the educational institution committing such violation. Such complaint shall be made in writing, under oath, within one hundred eighty days after such alleged violation, and shall set forth the claimant's address and the facts of such alleged violation with sufficient particularity as to permit the governing board to understand and investigate the conduct complained of.

(2) The governing board may take such action as may be necessary to correct such violation, including, but not limited to, (a) terminating the discriminatory practice or policy complained of and (b) awarding to the aggrieved person or persons such compensatory money damages as the particular facts and circumstances may warrant.

(3) The governing board shall dispose of the complaint and shall notify the claimant of its finding. All dispositions of such complaints shall be in writing and signed by the chief officer of the governing board, and a true copy of such disposition shall be mailed by certified mail, return receipt requested, to the

claimant at the address set forth on the complaint or at such other address as may be filed by the claimant with the governing board. The claimant shall notify the governing board of any change of address, and the governing board has no duty to attempt to locate any claimant who has failed to advise such board of a change of address.

**Source:** Laws 1996, LB 900, § 1090.

**85-9,171 Disposition of complaint; claimant; acceptance.**

If the claimant under section 85-9,170 elects to accept the written disposition of the complaint made by the governing board under such section, he or she shall notify such board in writing of his or her acceptance within sixty days after receipt of such disposition, at which time such disposition shall be deemed final and conclusive. A failure to notify the board of such acceptance within the time period provided in this section shall be deemed a rejection of such disposition.

**Source:** Laws 1996, LB 900, § 1091.

**85-9,172 Disposition of complaint; claimant; rejection; court action authorized.**

If the claimant under section 85-9,170 elects not to accept the written disposition of such complaint made by the governing board under such section, he or she may, within one hundred eighty days after receipt of such disposition, file an original action in the district court of the judicial district where such educational institution is located, for equitable relief and compensatory money damages. If such action includes a claim for money damages, such claimant shall be entitled to a trial by jury as to such claim for damages, unless he or she expressly waives in writing such trial by jury.

**Source:** Laws 1996, LB 900, § 1092.

**85-9,173 Complaint; failure of governing board to act; claimant's remedies.**

If the governing board fails to dispose of any written complaint filed pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act within one hundred eighty days after the date of filing, such complaint may be withdrawn by the claimant and he or she may then proceed to file an original action in the district court of the judicial district where such educational institution is located pursuant to section 85-9,172. Such action must be filed within two years of the date of the filing of such complaint.

**Source:** Laws 1996, LB 900, § 1093.

**85-9,174 Violation; complaint; prerequisite to other remedy.**

No original action asserting a violation of the Nebraska Equal Opportunity in Postsecondary Education Act may be filed in any district court unless a complaint asserting such violation is first filed with the governing board of the educational institution committing such discriminatory act or practice and disposed of or withdrawn as provided in the act.

**Source:** Laws 1996, LB 900, § 1094.

**85-9,175 Nebraska Fair Employment Practice Act; complaint; applicability.**

§ 85-9,175 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

The Nebraska Equal Opportunity in Postsecondary Education Act does not prohibit a person asserting a claim for discrimination in employment or the conditions thereof from filing a complaint pursuant to the Nebraska Fair Employment Practice Act. Filing a complaint pursuant to the Nebraska Fair Employment Practice Act constitutes a waiver of any right to seek relief pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act, and filing a complaint pursuant to the Nebraska Equal Opportunity in Postsecondary Education Act constitutes a waiver of any right to seek relief pursuant to the Nebraska Fair Employment Practice Act.

**Source:** Laws 1996, LB 900, § 1095.

**Cross References**

Nebraska Fair Employment Practice Act, see section 48-1125.

**85-9,176 Act; how construed.**

The Nebraska Equal Opportunity in Postsecondary Education Act does not prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes.

**Source:** Laws 1996, LB 900, § 1096.

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

**85-9,177 Act, how cited.**

Sections 85-9,177 to 85-9,182 shall be known and may be cited as the Student Diversity Scholarship Program Act.

**Source:** Laws 2000, LB 1379, § 1; Laws 2007, LB342, § 32.

**85-9,178 Legislative findings and intent.**

(1) The Legislature finds that the State of Nebraska has a compelling interest to provide access to the University of Nebraska, the state colleges, and the community colleges for students from diverse racial, ethnic, and cultural backgrounds who often find that the financial requirements of postsecondary education are a major obstacle. The Legislature further finds that the State of Nebraska has a compelling interest in attaining greater diversity in the racial, ethnic, and cultural makeup of the student bodies at the University of Nebraska, the state colleges, and the community colleges because of the educational benefits that a diverse educational environment will produce for all students attending the University of Nebraska, the state colleges, and the community colleges.

(2) It is the intent of the Legislature:

(a) To appropriate funds to support a student diversity program for the purpose of developing more racially, ethnically, and culturally diverse student bodies at the state's public postsecondary educational institutions;

(b) That the student diversity scholarship program be designed and implemented so as to achieve a greater racial, ethnic, and cultural diversity in student populations in fulfillment of the compelling interest found by the Legislature pursuant to subsection (1) of this section; and

(c) That all funds appropriated by the Legislature for student diversity scholarships at the University of Nebraska, the state colleges, and the communi-

ty colleges shall be used in coordination with private donations for such scholarships and in consultation with the major donors thereof and in coordination with federal grant funds available to students at the University of Nebraska, the state colleges, and the community colleges so as to maximize the level of benefits and accomplish the purposes of the Student Diversity Scholarship Program Act.

**Source:** Laws 2000, LB 1379, § 2; Laws 2007, LB342, § 33.

**85-9,179 Endowed scholarship funds; use; purpose.**

(1) All funds appropriated by the Legislature for the Student Diversity Scholarship Program Act shall be used to support endowed scholarship funds which shall be held, managed, and invested as authorized by section 72-1246 with only the income therefrom expended for scholarships.

(2) The purpose of such endowed scholarship funds is to provide total or partial undergraduate scholarships for tuition, fees, board and room, and books at all campuses of the University of Nebraska, the state colleges, and the community colleges to full-time undergraduate students who fulfill the criteria for award of a student diversity scholarship and who cannot afford such educational expenses due to lack of financial resources available to them.

**Source:** Laws 2000, LB 1379, § 3; Laws 2007, LB 342, § 34.

**85-9,180 Appropriations; use.**

(1) Funds appropriated for fiscal year 2000-01 and each fiscal year thereafter before fiscal year 2007-08 for the Minority Scholarship Program Act as it existed immediately prior to July 1, 2007, shall be used for the benefit of students pursuant to the Minority Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

(2) Funds appropriated for fiscal year 2007-08 and each fiscal year thereafter for the Student Diversity Scholarship Program Act shall be used for the benefit of students pursuant to the Student Diversity Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

**Source:** Laws 2000, LB 1379, § 4; Laws 2007, LB 342, § 35.

**85-9,181 Funds; use; administration; manner.**

(1) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the University of Nebraska and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to the University of Nebraska shall be used, administered, and invested in such manner as the Board of Regents of the University of Nebraska, in consultation with the board of governors of each participating community college, shall determine.

(2) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the state colleges and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to a state college shall be used, administered, and invested in such manner as the Board of Trustees of the Nebraska State

§ 85-9,181 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Colleges, in consultation with the board of governors of each participating community college, shall determine.

**Source:** Laws 2000, LB 1379, § 5; Laws 2003, LB 106, § 1; Laws 2007, LB 342, § 36.

**85-9,182 Awards; committee; determination.**

Criteria for the award of scholarships under the Student Diversity Scholarship Program Act shall be determined by a committee selected by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors. The committee shall include members of underrepresented minority groups and private donors to the endowed scholarship funds. Awards shall be consistent with the intent stated in the act and with the constitutions and laws of the United States and the State of Nebraska.

**Source:** Laws 2000, LB 1379, § 6; Laws 2007, LB 342, § 37.

(n) EDUCATION ROUNDTABLE

**85-9,183 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,184 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,185 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,186 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,187 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,188 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**85-9,189 Repealed. Laws 2002, Second Spec. Sess., LB 41, § 1.**

**ARTICLE 10**

**NEBRASKA SAFETY CENTER**

Section

- 85-1001. Legislative intent.
- 85-1002. Terms, defined.
- 85-1003. Nebraska Safety Center at the University of Nebraska at Kearney; established.
- 85-1004. Nebraska Safety Center; director; other personnel.
- 85-1005. Nebraska Safety Center; operation; funding.
- 85-1006. Nebraska Safety Center; purposes and functions.
- 85-1007. Nebraska Safety Center; agencies involved in activities relating to safety; cooperation.
- 85-1008. Nebraska Safety Center Advisory Council; membership; appointment.
- 85-1009. Repealed. Laws 1994, LB 683, § 33.
- 85-1010. Repealed. Laws 1994, LB 683, § 33.
- 85-1011. Repealed. Laws 1994, LB 683, § 33.
- 85-1012. Repealed. Laws 1994, LB 683, § 33.
- 85-1013. Repealed. Laws 1994, LB 683, § 33.

**85-1001 Legislative intent.**

The Legislature finds and declares that there is a vital need for increased training and research activity in the fields of traffic safety, domestic safety,

industrial safety, fire safety, and recreational safety and that this activity can best be achieved by utilizing the facilities of an institution of higher education.

The Legislature further declares and assents to the establishment and administration of the Nebraska Safety Center at the University of Nebraska at Kearney.

**Source:** Laws 1978, LB 693, § 1; Laws 1989, LB 247, § 28.

**85-1002 Terms, defined.**

For purposes of sections 85-1001 to 85-1008, unless the context otherwise requires, center shall mean the Nebraska Safety Center created under section 85-1003.

**Source:** Laws 1978, LB 693, § 2; Laws 1994, LB 683, § 12.

**85-1003 Nebraska Safety Center at the University of Nebraska at Kearney; established.**

(1) The Board of Regents of the University of Nebraska may establish the Nebraska Safety Center at the University of Nebraska at Kearney.

(2) It is the intent of the Legislature that existing available land and facilities be utilized in the establishment and administration of the center.

**Source:** Laws 1978, LB 693, § 3; Laws 1989, LB 247, § 29.

**85-1004 Nebraska Safety Center; director; other personnel.**

The Board of Regents of the University of Nebraska (1) may employ a director of the center who shall be responsible to the chief administrative officer at the University of Nebraska at Kearney and whose qualifications and salary shall be established by the board and (2) may employ or assign to the center such other professors, instructors, tutors, demonstrators, and other personnel as from time to time may be considered necessary for the administration of the center.

**Source:** Laws 1978, LB 693, § 4; Laws 1989, LB 247, § 30.

**85-1005 Nebraska Safety Center; operation; funding.**

(1) The Board of Regents of the University of Nebraska may accept and administer, in accordance with proper financial procedures at the University of Nebraska at Kearney, gifts, grants, tuition, and private funds to assist in the operation of the center.

(2) The Board of Regents of the University of Nebraska shall request an appropriation of such money from the General Fund as may be necessary to permit the center to operate efficiently and to promote the purposes of sections 85-1001 to 85-1008.

**Source:** Laws 1978, LB 693, § 5; Laws 1989, LB 247, § 31; Laws 1994, LB 683, § 13.

**85-1006 Nebraska Safety Center; purposes and functions.**

The purposes and functions of the center shall include (1) instruction, to provide educational courses and coordinated activities relating to all safety and safety education, (2) research, to provide leadership in identifying priorities of safety education and to provide expertise in safety research projects, (3) service,

§ 85-1006 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

to provide information and workshop opportunities to all interested individuals, and (4) coordination, to provide articulation for development of a statewide system of teacher preparation in safety education programs.

**Source:** Laws 1978, LB 693, § 6.

**85-1007 Nebraska Safety Center; agencies involved in activities relating to safety; cooperation.**

Whenever requested or deemed appropriate by the Nebraska Safety Center, the University of Nebraska, the community colleges, the State Department of Education, the Safety Council of Nebraska, Inc., the Coordinating Commission for Postsecondary Education, any agency providing services through city or local governments, and any other agency involved in activities related to safety shall cooperate with and offer expertise to the center to assist it in carrying out its purposes and functions under section 85-1006. It is not the intent of the Legislature to duplicate existing programs but to provide extensions of those programs when deemed necessary by the center and the organizations currently conducting the activity.

**Source:** Laws 1978, LB 693, § 7; Laws 1991, LB 663, § 123.

**85-1008 Nebraska Safety Center Advisory Council; membership; appointment.**

(1) To assist the center in carrying out its purposes and functions, the Board of Regents may establish a Nebraska Safety Center Advisory Council composed of the following members:

- (a) One representative from the Department of Roads;
- (b) One representative from the Department of Motor Vehicles;
- (c) One representative from the State Department of Education;
- (d) One representative from the Game and Parks Commission;
- (e) One representative from the Department of Labor;
- (f) One person representing the community college areas;
- (g) One person representing private business and industry;
- (h) One person representing the University of Nebraska;
- (i) One person representing the medical profession;
- (j) One person representing the area of law enforcement in this state;
- (k) One person representing the Safety Council of Nebraska, Inc.;
- (l) One person representing the area of transportation;
- (m) One person representative of emergency medical services;
- (n) One person representing the judiciary in the State of Nebraska;
- (o) One person representing city government;
- (p) One person representing county government;
- (q) One person representing the area of agriculture;
- (r) One person representing the local public school system;
- (s) One representative of the Coordinating Commission for Postsecondary Education;
- (t) One person representing the Red Cross; and

(u) One person representing the state colleges.

(2) Representatives selected to serve on the council shall have appropriate education, training, and experience in the field of industrial safety, recreational safety, domestic safety, or traffic safety.

**Source:** Laws 1978, LB 693, § 8; Laws 1991, LB 663, § 124; Laws 1994, LB 683, § 14.

**85-1009 Repealed. Laws 1994, LB 683, § 33.**

**85-1010 Repealed. Laws 1994, LB 683, § 33.**

**85-1011 Repealed. Laws 1994, LB 683, § 33.**

**85-1012 Repealed. Laws 1994, LB 683, § 33.**

**85-1013 Repealed. Laws 1994, LB 683, § 33.**

## ARTICLE 11

### HIGHER EDUCATION

#### (a) OUT-OF-STATE INSTITUTIONS

##### Section

- 85-1101. Out-of-state institution of higher education, defined.  
 85-1102. Out-of-state institution of higher education; registration; required; exception.  
 85-1103. Out-of-state institution of higher education; authorized to offer courses or degree programs; conditions; fee; rules and regulations.  
 85-1103.01. Out-of-state institution of higher education; authorized to offer telecommunications course or degree program; registration required; exemption; commission; duties.  
 85-1103.02. Out-of-state institution of higher education; courses or degree programs; application; hearing.  
 85-1104. Violation; penalty.

#### (b) PRIVATE COLLEGES

- 85-1105. Private college; petition for approval to establish; exception.  
 85-1106. Petition; form.  
 85-1107. Petition; hearing; publication of notice.  
 85-1108. Proposed college; factors considered; fee; rules and regulations.  
 85-1109. Petition; approval or disapproval.  
 85-1110. Petition; effect of approval or disapproval.  
 85-1110.01. Violation; penalty.  
 85-1111. Private college; provisional accreditation; procedure.

#### (a) OUT-OF-STATE INSTITUTIONS

##### **85-1101 Out-of-state institution of higher education, defined.**

For purposes of sections 85-1102 to 85-1104, unless the context otherwise requires, out-of-state institution of higher education shall include any college, university, community college, technical institute, junior college, or the equivalent that offers college credit courses or awards an associate or higher degree and is controlled by a public or private body organized outside the boundaries of the State of Nebraska.

**Source:** Laws 1979, LB 141, § 1; Laws 1993, LB 93, § 1; Laws 1999, LB 816, § 2.

**85-1102 Out-of-state institution of higher education; registration; required; exception.**

No out-of-state institution of higher education shall offer a course for college credit or degree program within the State of Nebraska unless it is first registered with and been authorized to do so by the Coordinating Commission for Postsecondary Education. The out-of-state institution of higher education shall be exempt from this section if the offering is in the nature of a short course or seminar and instruction for the segment takes not more than twenty classroom hours or each course or program offered by it in this state is offered on a military installation solely for military personnel or civilians employed on such installation.

**Source:** Laws 1979, LB 141, § 2; Laws 1991, LB 663, § 125; Laws 1999, LB 816, § 3.

**85-1103 Out-of-state institution of higher education; authorized to offer courses or degree programs; conditions; fee; rules and regulations.**

(1) The Coordinating Commission for Postsecondary Education shall consider the following factors in determining whether to authorize an out-of-state institution of higher education to offer courses or degree programs in this state:

(a) The financial soundness of such institution and its capability to fulfill its proposed commitments;

(b) The quality of teaching faculty, library, and support services, commensurate with tuition or fees charged;

(c) The demonstrated need and demand for the program in the area to be served;

(d) The quality of the programs to be offered in the state, including courses, programs of instruction, and degrees;

(e) The specific locations where programs will be offered or planned locations and a demonstration that facilities are adequate at the locations for the programs to be offered. When an out-of-state institution of higher education designates a planned program location, approval shall be contingent upon designation of a specific location or locations where programs will be offered within a reasonable period of time following commission approval;

(f) Adequate assurances regarding transfer of credits earned in the program to the main campus of such institution and to other institutions located in Nebraska and elsewhere; and

(g) Whether such institution and, when appropriate, the program are fully accredited by an accrediting body recognized by the United States Department of Education.

(2) The commission may charge a reasonable fee based on its administrative costs for registration and authorization and may also adopt and promulgate rules and regulations as may be necessary to carry out this section.

(3) The commission may revoke or suspend any authorization of an out-of-state institution of higher education to offer a course or degree program in this state upon violation of this section or any agreement submitted for authorization.

**Source:** Laws 1979, LB 141, § 3; Laws 1991, LB 663, § 126; Laws 1993, LB 93, § 2.

**85-1103.01 Out-of-state institution of higher education; authorized to offer telecommunications course or degree program; registration required; exemption; commission; duties.**

An out-of-state institution of higher education which will offer a course or degree program via telecommunications within Nebraska and which will have a physical presence in Nebraska shall register with and seek approval of the Coordinating Commission for Postsecondary Education prior to offering such course or program in Nebraska. Such institution shall be exempt from this section if the offering is in the nature of a short course or seminar and instruction for the segment takes not more than twenty classroom hours or each course or program offered by it in this state is offered on a military installation solely for military personnel or civilians employed on such installations.

For purposes of this section, physical presence in Nebraska is evidenced by arrangements for sites where such an institution offers one or more courses for college credit on an established schedule at locations other than the personal residence of individual students.

The commission shall establish standards for approval of telecommunications-based courses or programs to be offered in the state by such institutions as prescribed in section 85-1103. Alternatively the commission may enter into reciprocal agreements to review degree programs offered via telecommunications if the standards for review in the state of origin are at least equivalent to the standards prescribed in such section.

**Source:** Laws 1993, LB 93, § 3.

**85-1103.02 Out-of-state institution of higher education; courses or degree programs; application; hearing.**

(1) Out-of-state institutions of higher education shall make application for authorization to offer college credit courses or degree programs within the State of Nebraska on forms prescribed by the Coordinating Commission for Postsecondary Education. Following receipt of a complete application, the commission shall set a time and place for a public hearing and shall cause notice of the hearing to be published in one or more newspapers of general circulation in the affected county or counties not less than thirty days or more than sixty days prior to the date set for the hearing. The hearing shall be held as provided in the Administrative Procedure Act.

(2) Following the public hearing, the commission shall either approve or disapprove the application for authorization to offer college credit courses or degree programs in the state. If approved, the commission shall specify in its approval the level and range of courses or degree programs which the applying institution is authorized to offer in the state.

**Source:** Laws 1999, LB 816, § 4.

## Cross References

Administrative Procedure Act, see section 84-920.

**85-1104 Violation; penalty.**

§ 85-1104 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Any person violating sections 85-1101 to 85-1103.02 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1979, LB 141, § 4; Laws 1993, LB 93, § 4; Laws 1999, LB 816, § 5.

(b) PRIVATE COLLEGES

**85-1105 Private college; petition for approval to establish; exception.**

In order to establish a new two-year, four-year, graduate, or professional private college, any individual or organization sponsoring such a college shall first petition the Coordinating Commission for Postsecondary Education for approval thereof.

For purposes of this section, any private college or private postsecondary career school which will extend its program offerings to the baccalaureate or higher degree level shall first petition the commission for approval. Any private college which, on September 1, 1999, has offered one or more four-year undergraduate programs for at least one academic year in compliance with state and federal law shall not be required to petition the commission under this section for approval to offer graduate or professional programs.

**Source:** Laws 1967, c. 513, § 1, p. 1719; R.S.1943, (1976), § 79-2401; Laws 1979, LB 141, § 5; Laws 1991, LB 663, § 127; Laws 1999, LB 816, § 6; Laws 2003, LB 685, § 27.

**85-1106 Petition; form.**

The petition provided for in section 85-1105 shall be in such form as the Coordinating Commission for Postsecondary Education prescribes and shall be sufficiently detailed as to disclose the feasibility or lack of feasibility of establishing the proposed college.

**Source:** Laws 1967, c. 513, § 2, p. 1719; R.S.1943, (1976), § 79-2402; Laws 1979, LB 141, § 6; Laws 1991, LB 663, § 128.

**85-1107 Petition; hearing; publication of notice.**

Upon receipt of a petition under section 85-1105, the Coordinating Commission for Postsecondary Education shall set a time and a place for a public hearing thereon and shall cause notice thereof to be published in one or more newspapers of general circulation not less than thirty and not more than sixty days prior to the date set for the hearing. Such hearing shall be held as provided in the Administrative Procedure Act.

**Source:** Laws 1967, c. 513, § 3, p. 1719; R.S.1943, (1976), § 79-2403; Laws 1979, LB 141, § 7; Laws 1991, LB 663, § 129; Laws 1993, LB 93, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

**85-1108 Proposed college; factors considered; fee; rules and regulations.**

(1) In considering the feasibility of the college proposed in a petition under section 85-1105, the Coordinating Commission for Postsecondary Education shall take into account the following factors:

- (a) The need for and the objectives of the proposed college;
- (b) The proposed instructional program and the plan for staffing such a program, including staff qualifications;
- (c) The financial soundness and capability to fulfill its proposed commitments;
- (d) Affirmation of intent to seek appropriate accreditation of the institution by an entity recognized by the United States Department of Education. When any new private college or private postsecondary career school petitions the commission to offer degrees at the baccalaureate or higher degree level, it shall seek accreditation by an accrediting agency which has been approved by the United States Department of Education with the scope to accredit institutions offering programs at such degree levels; and

(e) Such other pertinent factors as relate to the potential of the proposed college to achieve its objectives or as may be developed at the hearing.

(2) The commission may charge a reasonable fee based on its administrative costs for review and authorization of petitions and applications made pursuant to sections 85-1105 to 85-1111 and may also adopt and promulgate such rules and regulations as may be necessary to carry out sections 85-1105 to 85-1111.

**Source:** Laws 1967, c. 513, § 4, p. 1719; R.S.1943, (1976), § 79-2404; Laws 1979, LB 141, § 8; Laws 1991, LB 663, § 130; Laws 1993, LB 93, § 6; Laws 1999, LB 816, § 7; Laws 2003, LB 685, § 28.

**85-1109 Petition; approval or disapproval.**

After the hearing, the Coordinating Commission for Postsecondary Education shall either approve or disapprove the petition. If approved, the commission shall specify in its approval the courses and degree programs which the new private college is authorized to offer.

**Source:** Laws 1967, c. 513, § 5, p. 1719; R.S.1943, (1976), § 79-2405; Laws 1979, LB 141, § 9; Laws 1991, LB 663, § 131; Laws 1999, LB 816, § 8.

**85-1110 Petition; effect of approval or disapproval.**

If the petition is approved, the petitioner shall be authorized to proceed with the establishment of the proposed college. If the petition is disapproved, the college shall not be established.

**Source:** Laws 1967, c. 513, § 6, p. 1720; R.S.1943, (1976), § 79-2406.

**85-1110.01 Violation; penalty.**

Any person violating sections 85-1105 to 85-1110 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1999, LB 816, § 9.

**85-1111 Private college; provisional accreditation; procedure.**

The Coordinating Commission for Postsecondary Education may provisionally accredit a private college which has not previously been accredited by any regional accrediting association as follows:

(1) The college shall first make application for such provisional accreditation in such form as the commission may prescribe;

§ 85-1111 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(2) The commission shall consider the following criteria before taking action on such application:

(a) The instructional program of the college, which must be similar in quality and content to that offered in accredited public and private colleges within the state;

(b) The educational and experience qualifications of the administrative and instructional staff must be adequate to fulfill the purposes of the college;

(c) The physical plant, including provisions for housing and student services, and the instructional equipment of the college must be adequate to carry out the educational program;

(d) The college must be financially sound and capable of carrying out its commitments; and

(e) It must be the intent of the college to become accredited by a regional accrediting association and any necessary action to obtain such accreditation must have been taken; and

(3) Such provisional accreditation shall remain in effect for not more than three years but may be renewed for a like period in the manner provided in this section.

**Source:** Laws 1967, c. 513, § 7, p. 1720; R.S.1943, (1976), § 79-2407; Laws 1979, LB 141, § 10; Laws 1991, LB 663, § 132.

**ARTICLE 12**

**NEBRASKA COLLEGIATE ATHLETIC ASSOCIATION PROCEDURES ACT**

Section

- 85-1201. Act, how cited.
- 85-1202. Legislative findings.
- 85-1203. Due process required; when.
- 85-1204. Imposition of penalty for violation of rule; requirements.
- 85-1205. Imposition of penalty for failure to take disciplinary action; requirements.
- 85-1206. Violation; proceedings authorized; prohibited acts.
- 85-1207. Violation; liability; computation of amount.
- 85-1208. Employee or student; proceedings authorized; prohibited acts.
- 85-1209. Penalty imposed; judicial review.
- 85-1210. Act; remedies cumulative.

**85-1201 Act, how cited.**

Sections 85-1201 to 85-1210 shall be known and may be cited as the Nebraska Collegiate Athletic Association Procedures Act.

**Source:** Laws 1990, LB 397, § 1.

**85-1202 Legislative findings.**

The Legislature hereby finds and declares that:

(1) The National Collegiate Athletic Association is a national unincorporated association consisting of public and private colleges and universities and is a private monopolist that controls intercollegiate athletics throughout the United States;

(2) The National Collegiate Athletic Association adopts rules governing member institutions' admissions, academic eligibility, and financial aid standards for collegiate athletes;

(3) A member must agree contractually to administer its athletic program in accordance with National Collegiate Athletic Association legislation;

(4) National Collegiate Athletic Association rules provide that association enforcement procedures are an essential part of the intercollegiate athletic program of each member institution;

(5) The National Collegiate Athletic Association exercises great power over member institutions by virtue of its monopolistic control of intercollegiate athletics and its power to prevent a nonconforming institution from competing in intercollegiate athletic events or contests;

(6) Substantial monetary loss, serious disruption of athletic programs, and significant damage to reputation may result from the imposition of penalties on a college or university by the National Collegiate Athletic Association for what the association determines to be a violation of its rules; and

(7) Because of such potentially serious and far reaching consequences, all proceedings which may result in the imposition of any penalty by the National Collegiate Athletic Association should be subject to the requirements of due process of law.

**Source:** Laws 1990, LB 397, § 2.

**85-1203 Due process required; when.**

Every stage and facet of all proceedings of a collegiate athletic association, college, or university that may result in the imposition of a penalty for violation of such association's rule or legislation shall comply with due process of law as guaranteed by the Constitution of Nebraska and the laws of Nebraska.

**Source:** Laws 1990, LB 397, § 3.

**85-1204 Imposition of penalty for violation of rule; requirements.**

No collegiate athletic association shall impose a penalty on any college or university for violation of such association's rule or legislation in violation of the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

**Source:** Laws 1990, LB 397, § 4.

**85-1205 Imposition of penalty for failure to take disciplinary action; requirements.**

No collegiate athletic association shall impose a penalty on any college or university for failure to take disciplinary action against an employee or student for violation of such association's rule or legislation in violation of the due process requirements of the Nebraska Collegiate Athletic Association Procedures Act.

**Source:** Laws 1990, LB 397, § 5.

**85-1206 Violation; proceedings authorized; prohibited acts.**

A collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university in an action at law, suit in equity, or other proper proceeding for redress. No

§ 85-1206 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

penalty shall be threatened against or imposed upon an aggrieved college or university for seeking redress pursuant to this section.

**Source:** Laws 1990, LB 397, § 6.

**85-1207 Violation; liability; computation of amount.**

In addition to costs and a reasonable attorney's fee, a collegiate athletic association that violates the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the aggrieved college or university for an amount equal to one hundred percent of the monetary loss per year or portion of a year suffered during the period that any monetary loss occurs due to a penalty imposed in violation of the act. For purposes of calculating monetary loss, one hundred percent of the yearly loss shall be equal to the gross amount realized by the affected athletic program during the immediately preceding calendar year.

**Source:** Laws 1990, LB 397, § 7.

**85-1208 Employee or student; proceedings authorized; prohibited acts.**

A collegiate athletic association, college, or university which subjects, or causes to be subjected, any employee or student to a penalty in violation of the Nebraska Collegiate Athletic Association Procedures Act shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. No penalty shall be threatened against or imposed upon an aggrieved party for seeking redress pursuant to this section. In addition to any other relief granted, an aggrieved employee or student shall be awarded costs and a reasonable attorney's fee.

**Source:** Laws 1990, LB 397, § 8.

**85-1209 Penalty imposed; judicial review.**

Any penalty imposed by any collegiate athletic association, college, or university shall be subject to judicial review in the district court.

**Source:** Laws 1990, LB 397, § 9.

**85-1210 Act; remedies cumulative.**

The remedies provided in the Nebraska Collegiate Athletic Association Procedures Act are cumulative and in addition to any other remedies provided by law.

**Source:** Laws 1990, LB 397, § 10.

**ARTICLE 13**

**MIDWESTERN HIGHER EDUCATION COMPACT**

Section

85-1301. Ratification and approval.

85-1302. Midwestern Higher Education Commission; members; terms; vacancies.

**85-1301 Ratification and approval.**

The State of Nebraska hereby ratifies and approves the following compact:

## MIDWESTERN HIGHER EDUCATION COMPACT

## ARTICLE I

## PURPOSE

The purpose of the Midwestern Higher Education Compact shall be to provide greater higher education opportunities and services in the midwestern region with the aim of furthering regional access to, research in, and the choice of higher education for the citizens residing in the several states which are parties to this compact.

## ARTICLE II

## THE COMMISSION

A. The compacting states hereby create the Midwestern Higher Education Commission, hereinafter called the Commission. The Commission shall be a body corporate of each compacting state. The Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Commission shall consist of five resident members of each state as follows: The Governor or the Governor's designee who shall serve during the tenure of office of the Governor; two legislators, one from each house (except Nebraska which may appoint two legislators from its Unicameral Legislature), who shall serve two-year terms and be appointed by the appropriate appointing authority in each house of the legislature; and two other at-large members, at least one of whom shall be selected from the field of higher education. The at-large members shall be appointed in a manner provided by the laws of the appointing state. One of the two at-large members initially appointed in each state shall serve a two-year term. The other, and any regularly appointed successor to either at-large member, shall serve a four-year term. All vacancies shall be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term.

C. The Commission shall select annually, from among its members, a chairperson, a vice-chairperson, and a treasurer.

D. The Commission shall appoint an executive director who shall serve at its pleasure and who shall act as secretary to the Commission. The treasurer, the executive director, and such other personnel as the Commission may determine shall be bonded in such amounts as the Commission may require.

E. The Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a majority of the Commission members of three or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

F. Each compacting state represented at any meeting of the Commission shall be entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the Commission.

## ARTICLE III

## POWERS AND DUTIES OF THE COMMISSION

A. The Commission shall adopt a seal and suitable bylaws governing its management and operations.

B. Irrespective of the civil service, personnel, or other merit system laws of any of the compacting states, the Commission in its bylaws shall provide for the personnel policies and programs of the compact.

C. The Commission shall submit a budget to the governor and legislature of each compacting state at such time and for such period as may be required. The budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the compacting states.

D. The Commission shall report annually to the legislatures and governors of the compacting states, to the Midwestern Governors' Conference, and to the Midwestern Legislative Conference of the Council of State Governments concerning the activities of the Commission during the preceding year. Such reports shall also embody any recommendations that may have been adopted by the Commission.

E. The Commission may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, foundation, person, firm, or corporation.

F. The Commission may accept for any of its purposes and functions under the compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof or interstate agency, or from any institution, foundation, person, firm, or corporation and may receive, utilize, and dispose of the same.

G. The Commission may enter into agreements with any other interstate education organizations or agencies and with higher education institutions located in nonmember states and with any of the various states of the United States to provide adequate programs and services in higher education for the citizens of the respective compacting states. The Commission shall, after negotiations with interested institutions and interstate organizations or agencies, determine the cost of providing the programs and services in higher education for use in these agreements.

H. The Commission may establish and maintain offices which shall be located within one or more of the compacting states.

I. The Commission may establish committees and hire staff as it deems necessary for the carrying out of its functions.

J. The Commission may provide for actual and necessary expenses for attendance of its members at official meetings of the Commission or its designated committees.

## ARTICLE IV

## ACTIVITIES OF THE COMMISSION

A. The Commission shall collect data on the long-range effects of the compact on higher education. By the end of the fourth year from the effective date of the compact and every two years thereafter, the Commission shall review its

accomplishments and make recommendations to the governors and legislatures of the compacting states on the continuance of the compact.

B. The Commission shall study issues in higher education of particular concern to the midwestern region. The Commission shall also study the needs for higher education programs and services in the compacting states and the resources for meeting such needs. The Commission shall, from time to time, prepare reports on such research for presentation to the governors and legislatures of the compacting states and other interested parties. In conducting such studies, the Commission may confer with any national or regional planning body. The Commission may draft and recommend to the governors and legislatures of the various compacting states suggested legislation dealing with problems of higher education.

C. The Commission shall study the need for provision of adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for exchange in a field is apparent, the Commission may enter into such agreements with any higher education institution and with any of the compacting states to provide programs and services in higher education for the citizens of the respective compacting states. The Commission shall, after negotiations with interested institutions and the compacting states, determine the cost of providing the programs and services in higher education for use in its agreements. The contracting states shall contribute the funds not otherwise provided, as determined by the Commission, for carrying out the agreements. The Commission may also serve as the administrative and fiscal agent in carrying out agreements for higher education programs and services.

D. The Commission shall serve as a clearinghouse on information regarding higher education activities among institutions and agencies.

E. In addition to the activities of the Commission previously noted, the Commission may provide services and research in other areas of regional concern.

## ARTICLE V

### FINANCE

A. The monies necessary to finance the general operations of the Commission not otherwise provided for in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the Commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states.

B. The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same, nor shall the Commission pledge the credit of any of the compacting states except by and with the authority of the compacting state.

C. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

D. The accounts of the Commission shall be open at any reasonable time for inspection by duly authorized representatives of the compacting states and persons authorized by the Commission.

#### ARTICLE VI

##### ELIGIBLE PARTIES AND ENTRY INTO FORCE

A. The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin shall be eligible to become party to this compact.

Additional states will be eligible if approved by the majority of the compacting states.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, except that it shall not become initially effective until enacted into law by five states prior to December 31, 1995.

C. Amendments to the compact shall become effective upon their enactment by the legislatures of all compacting states.

#### ARTICLE VII

##### WITHDRAWAL, DEFAULT AND TERMINATION

A. Any compacting state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until two years after the enactment of such statute. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.

B. If any compacting state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the Commission, and the Commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the Commission, this compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other member states. Any such defaulting state may be reinstated by performing all acts and obligations as stipulated by the Commission.

#### ARTICLE VIII

##### SEVERABILITY AND CONSTRUCTION

The provisions of this compact entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact entered into hereunder shall be held contrary to the constitution of any compacting state, the compact shall remain in full

force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

**Source:** Laws 1991, LB 209, § 1.

**85-1302 Midwestern Higher Education Commission; members; terms; vacancies.**

Notwithstanding any provision of Article II of the Midwestern Higher Education Compact, members of the Midwestern Higher Education Commission residing in Nebraska shall be as follows: (1) The Governor or his or her designee who shall serve during the tenure of office of the Governor; (2) two members of the Legislature selected by the Executive Board of the Legislative Council; and (3) two members appointed by the Governor representing higher education, at least one of whom shall be a member of the statewide Coordinating Commission for Postsecondary Education. The director of such coordinating commission shall serve as an ex officio member of the Midwestern Higher Education Commission. Length of terms of the members appointed pursuant to subdivision (3) of this section shall be as provided in Article II of the compact for at-large members. Vacancies shall be filled as provided in such article.

**Source:** Laws 1991, LB 209, § 2.

**ARTICLE 14**

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION**

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

Section

- 85-1401. Act, how cited.
- 85-1402. Terms, defined.
- 85-1403. Coordinating Commission for Postsecondary Education; established.
- 85-1404. Commission; purposes; powers and duties.
- 85-1405. Commission; membership; terms.
- 85-1406. Commission; vacancies.
- 85-1407. Commission; removal of members by Governor; procedure.
- 85-1408. Commission; members; expenses.
- 85-1409. Commission; officers; meetings; quorum.
- 85-1410. Commission; duties.
- 85-1411. Commission; executive director, employees, consultants; compensation; recruitment expenses; rules and regulations; duties.
- 85-1412. Commission; additional powers and duties.
- 85-1413. Comprehensive statewide plan; establish; requirements; unified statewide facilities plan; develop.
- 85-1414. Programs; capital construction projects; review; commission, public institutions, and governing boards; duties.
- 85-1415. Capital construction projects proposed by Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, and certain nonprofit corporations; review; commission; duties; approval by Legislature.
- 85-1416. Budget and state aid requests; review; commission; duties.
- 85-1417. Reports to commission; form.
- 85-1418. Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure.
- 85-1419. Coordinating Commission for Postsecondary Education Cash Fund; created; use; investment.
- 85-1420. Coordinating Commission for Postsecondary Education Trust Fund; created; use; investment.

§ 85-1401 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Section

(b) NEBRASKA EDUCATIONAL DATA SYSTEM

- 85-1421. Legislative intent.
- 85-1422. Terms, defined.
- 85-1423. Commission; postsecondary education information system; duties.
- 85-1424. Commission; verification and reporting duties.
- 85-1425. Commission; solicit advice.
- 85-1426. Postsecondary education system and institution; report.
- 85-1427. Commission; administrative duties.

(c) LEGISLATIVE PRIORITIES

- 85-1428. Economic expansion and diversification; postsecondary education priorities; legislative findings.
- 85-1429. Commission; report on higher education priorities.

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

**85-1401 Act, how cited.**

Sections 85-1401 to 85-1420 shall be known and may be cited as the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1991, LB 663, § 4; Laws 1999, LB 816, § 10.

**85-1402 Terms, defined.**

For purposes of the Coordinating Commission for Postsecondary Education Act:

(1)(a) Capital construction project shall mean a project which utilizes tax funds designated by the Legislature and shall be: Any proposed new capital structure; any proposed addition to, renovation of, or remodeling of a capital structure; any proposed acquisition of a capital structure by gift, purchase, lease-purchase, or other means of construction or acquisition that (i) will be directly financed in whole or in part with tax funds designated by the Legislature totaling at least the minimum capital expenditure for purposes of this subdivision or (ii) is likely, as determined by the institution, to result in an incremental increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. No tax funds designated by the Legislature shall be appropriated or expended for any incremental increase of more than the minimum capital expenditure for the costs of the operations and utilities of any facility which is not included in the definition of capital construction project and thus is not subject to commission approval pursuant to the Coordinating Commission for Postsecondary Education Act. No institution shall include a request for funding such an increase in its budget request for tax funds designated by the Legislature nor shall any institution utilize any such funds for such an increase. The Governor shall not include in his or her budget recommendations, and the Legislature shall not appropriate, such funds for such increase.

(b) For purposes of this subdivision:

(i) Directly financed shall mean funded by:

(A) Appropriation of tax funds designated by the Legislature for the specific capital construction project;

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1402**

(B) Property tax levies used to establish a capital improvement and bond sinking fund pursuant to section 85-1515; or

(C) That portion of tax funds designated by the Legislature and appropriated by the Legislature for the general operation of the public institution and utilized to fund the capital project;

(ii) Incremental increase shall mean an increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a capital structure's operations and maintenance costs that are a direct result of a capital construction project; and

(iii) Minimum capital expenditure shall mean:

(A) For purposes of subdivision (a)(i) of this subdivision, a base amount of five hundred thousand dollars; and

(B) For the facility's operations and maintenance costs pursuant to subdivision (a)(ii) of this subdivision, a base amount of seventy-five thousand dollars for any one fiscal year.

Both base amounts shall be subject to any inflationary or market adjustments made by the commission pursuant to this subdivision. The commission shall adjust the base amounts on a biennial basis beginning January 1, 2008. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, both as selected by the commission in cooperation with the public institutions. The index or indices shall reflect inflationary or market trends for the applicable operations and maintenance or construction costs;

(2) Commission shall mean the Coordinating Commission for Postsecondary Education;

(3) Coordination shall mean:

(a) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (i) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as may be prescribed by the Legislature and (ii) plans for facilities which utilize tax funds designated by the Legislature;

(b) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(c) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the governing boards or any other governing board for any other public postsecondary educational institution which may be established by the Legislature;

(4) Education center shall mean an off-campus branch of a public institution or cooperative of either public or public and private postsecondary educational institutions which offers instructional programs to students;

(5) Governing board shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area;

§ 85-1402 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(6) Program shall mean any program of instruction which leads directly to a degree, diploma, or certificate and, for purposes of section 85-1414, shall include public service programs and all off-campus instructional programs, whether or not such programs lead directly to a degree, diploma, or certificate. Program shall also include the establishment of any new college, school, major division, education center, or institute but shall not include reasonable and moderate extensions of existing curricula which have a direct relationship to existing programs;

(7) Public institution shall mean each campus of a public postsecondary educational institution which is or may be established by the Legislature, which is under the direction of a governing board, and which is administered as a separate unit by the board; and

(8) Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue.

**Source:** Laws 1991, LB 663, § 5; Laws 1994, LB 683, § 15; Laws 1999, LB 816, § 11; Laws 2006, LB 196, § 2.

**85-1403 Coordinating Commission for Postsecondary Education; established.**

The Coordinating Commission for Postsecondary Education is hereby established. The commission shall, under the direction of the Legislature, be vested with the authority for the coordination of public institutions in Nebraska as provided in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1991, LB 663, § 6.

**85-1404 Commission; purposes; powers and duties.**

The purposes of the Coordinating Commission for Postsecondary Education established by Article VII, section 14, of the Constitution of Nebraska and section 85-1403 shall be to (1) develop an ongoing comprehensive statewide plan for the operation of an educationally and economically sound, vigorous, progressive, and coordinated system of postsecondary education, (2) identify and enact policies to meet the educational, research, and public service needs of the state, and (3) effect the best use of available resources through the elimination of unnecessary duplication of programs and facilities among Nebraska's public institutions.

In carrying out its powers and duties, the commission shall consider the need for diversity of public institutions and the need for addressing regional needs but shall above all reflect a commitment to a perspective in decisionmaking and planning for postsecondary education which will best serve the state as a whole consistent with the role and mission assignment of each public institution.

The commission shall work with the public institutions to encourage and sustain their aspirations consistent with the comprehensive statewide plan and in a manner designed to achieve a vision of statewide postsecondary education. The commission shall not be an advocate for any one public institution but shall strive for a balance and responsiveness among all public institutions.

**Source:** Laws 1991, LB 663, § 7.

**85-1405 Commission; membership; terms.**

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1409**

The commission shall consist of eleven members who shall be appointed by the Governor with the approval of a majority of the Legislature. One member shall be chosen from each of the six Supreme Court judicial districts. Five members shall be chosen on a statewide basis. The term of each member shall be six years or until a successor is qualified and takes office, except that of the members initially appointed, two statewide members and the members appointed from districts 1 and 2 shall serve for terms of two years and two statewide members and the members appointed from districts 3 and 4 shall serve for terms of four years. Members shall be residents of the state or district from which appointed, and no member or any member of his or her immediate family shall be employed by or be a member of a governing board or of a governing body of an independent or private university or college.

**Source:** Laws 1991, LB 663, § 8; Laws 1994, LB 683, § 16.

**85-1406 Commission; vacancies.**

If any vacancy occurs during the term of a member of the commission, the Governor shall make an appointment to fill the vacancy for the remainder of the term. If the appointment is made when the Legislature is in session, the appointment shall be subject to the approval of a majority of the Legislature. If the appointment is made when the Legislature is not in session, the appointee shall serve with all rights and authority of the office until the approval or disapproval of the appointment is considered by the next session of the Legislature following the appointment.

**Source:** Laws 1991, LB 663, § 9.

**85-1407 Commission; removal of members by Governor; procedure.**

Members may be removed by the Governor for cause but only after delivering to the member a copy of the charges and affording him or her an opportunity to be publicly heard in person, or by counsel, in his or her own defense upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the findings thereon together with the complete record of the proceedings.

**Source:** Laws 1991, LB 663, § 10.

**85-1408 Commission; members; expenses.**

Members of the commission shall receive no compensation for the performance of their duties but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1991, LB 663, § 11.

**85-1409 Commission; officers; meetings; quorum.**

(1) The members of the commission shall annually elect a chairperson and vice-chairperson from among their members.

(2) The commission shall hold regular meetings at times determined by the commission. Special or additional meetings may be held on the call of the chairperson or upon the call of at least three members. A majority of the members shall constitute a quorum at all meetings. Commission action on any

item shall require a majority of those present at meetings in which there is a quorum, except that adoption of the comprehensive statewide plan, or any changes or alternatives thereto, required by section 85-1413 and approval or disapproval of a new program or disapproval of an existing program pursuant to section 85-1414 shall require the concurrence of a majority of the members.

**Source:** Laws 1991, LB 663, § 12; Laws 1994, LB 683, § 17; Laws 1999, LB 816, § 12; Laws 2006, LB 196, § 3.

**85-1410 Commission; duties.**

In carrying out its duties, the commission shall:

(1) Encourage initiatives and collaboration between public institutions, public state and local entities, and private state and local entities to increase the contribution of postsecondary education in advancing Nebraska's economy;

(2) Encourage the governing boards and administrators of public institutions to review instructional practices, curriculum design and content, and related academic considerations to facilitate improvements that enhance the quality of education in the state;

(3) Encourage the interaction of public institutions with elementary and secondary educational institutions to facilitate joint planning initiatives regarding matters such as prior and subsequent learning practices and content, class or credit agreements for high school students enrolling in college-level programs, and shared instructional assignments; and

(4) Develop only those programs, activities, or functions (a) authorized by Article VII, section 14, of the Constitution of Nebraska or the Coordinating Commission for Postsecondary Education Act or (b) as directed by the Legislature. The commission, at its discretion, may develop programs, activities, or functions requested by the Legislature or the Governor. The commission may not direct any public institution to undertake any action unless authorized by Article VII, section 14, of the Constitution of Nebraska or the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1991, LB 663, § 13; Laws 1999, LB 816, § 13.

**85-1411 Commission; executive director, employees, consultants; compensation; recruitment expenses; rules and regulations; duties.**

To assist it in carrying out its duties, the commission shall:

(1) Employ an executive director and all other employees of the office of the commission and hire consultants as may be necessary and prescribe their duties;

(2) Except as may be provided pursuant to the State Employees Collective Bargaining Act, fix the compensation of the officers and employees of the office and provide benefits for all present or future employees of the commission, including retirement benefits, group life insurance, group hospital-medical insurance, and group long-term disability income insurance;

(3) Pay expenses for the recruitment of administrative and professional personnel for the commission; and

(4) Adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act or as otherwise provided in the Coordinating Commission for Postsecondary Education Act to carry out the Coordinating Commission for

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1412**

Postsecondary Education Act and the powers and duties of the commission, except that for sections 85-1402 and 85-1413 to 85-1416, the provisions in section 84-908 for approval of the adoption, amendment, or repeal of any rule or regulation by the Governor shall not apply.

**Source:** Laws 1991, LB 663, § 14.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**State Employees Collective Bargaining Act**, see section 81-1369.

**85-1412 Commission; additional powers and duties.**

The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer the Access College Early Scholarship Program Act and the Nebraska Scholarship Act;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out

§ 85-1412 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) Consistent with section 85-1620, approve, in a timely manner, new baccalaureate degree programs to be offered at private postsecondary career schools as defined in section 85-1603. The commission may charge a reasonable fee based on its administrative costs for authorizations pursuant to this subdivision and section 85-1620. The commission shall report such action to the Commissioner of Education;

(10) Pursuant to sections 85-1101 to 85-1104, authorize out-of-state institutions of higher or postsecondary education to offer courses or degree programs in this state;

(11) Pursuant to sections 85-1105 to 85-1111, approve or disapprove petitions to establish new private colleges in this state;

(12) On or before December 1, 2000, and on or before December 1 every two years thereafter, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years;

(13) Provide staff support for interstate compacts on postsecondary education; and

(14) Request inclusion of the commission in any existing grant review process and information system.

**Source:** Laws 1991, LB 663, § 15; Laws 1993, LB 93, § 7; Laws 1994, LB 683, § 18; Laws 1999, LB 816, § 14; Laws 2003, LB 7, § 5; Laws 2003, LB 574, § 26; Laws 2003, LB 685, § 29; Laws 2007, LB192, § 1.

**Cross References**

**Access College Early Scholarship Program Act**, see section 85-2101.

**Integrated Postsecondary Education Data System**, see section 85-1424.

**Nebraska Scholarship Act**, see section 85-1901.

**Private Postsecondary Career School Act**, see section 85-1601.

**85-1413 Comprehensive statewide plan; establish; requirements; unified statewide facilities plan; develop.**

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall establish and revise as needed a comprehensive statewide plan for postsecondary education which shall include (a) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as prescribed in sections 85-917 to 85-966 and (b) a plan for facilities which utilize tax funds designated by the Legislature.

(2) Beginning on September 1, 1999, the commission shall work in consultation with the governing boards in revising the existing comprehensive statewide plan to reflect the role and mission of public postsecondary educational

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1413**

institutions and to articulate statewide goals. The process of reviewing and revising the plan shall be completed by January 1, 2001, if practicable.

(3) The planning process of the commission (a) shall be policy-based and ongoing in order to achieve, within the coordination function of the commission pursuant to section 85-1403, the best possible use of available state resources for high quality and accessible postsecondary educational services and (b) shall take into consideration (i) the needs of the state as described in subsection (4) of this section, (ii) general assignments of role and mission for each public institution in sections 85-917 to 85-966, and (iii) plans for facilities which utilize tax funds designated by the Legislature.

(4) In establishing the plan, the commission shall assess the postsecondary educational needs of the state in the following areas:

- (a) The basic and continuing needs of various age groups;
- (b) Business and industrial needs for a skilled work force;
- (c) Demographic, social, and economic trends;
- (d) The needs of the ethnic populations;
- (e) College attendance, retention, and dropout rates;
- (f) The needs of recent high school graduates and place-bound adults;
- (g) The needs of residents of all geographic regions; and
- (h) Any other areas the commission may designate.

(5) The plan shall provide a structure or process which encourages and facilitates harmonious and cooperative relationships between public and private postsecondary educational institutions and shall recognize the role and relationship of elementary and secondary education and private postsecondary educational institutions in the state to postsecondary education.

(6) The commission shall incorporate into the plan provisions and policies to guide decisionmaking by the commission pursuant to this section and sections 85-1414 and 85-1415. The provisions and policies shall address issues which include, but are not limited to:

(a) The facilitation of statewide transfer-of-credit guidelines to be considered by institutional governing boards. The statewide transfer-of-credit guidelines shall be designed to facilitate the transfer of students among public institutions. The statewide transfer-of-credit guidelines shall not require nor encourage the standardization of course content and shall not prescribe course content or credit value assigned by any public institution to the courses;

(b) Recommended guidelines for admissions which recognize selective and differentiated admission standards at public institutions and which are consistent with the role and mission of each public institution. It is the intent of the Legislature that changes in admission standards be implemented in conjunction with the role and mission statements established pursuant to this section and sections 85-917 to 85-966 and the adoption of statewide transfer-of-credit and remedial program policies to assure that access to postsecondary education is not limited;

(c) Recommended enrollment guidelines consistent with the role and mission of each public institution and specific recommendations designed to increase diversity through more effective enrollment and retention at public institutions;

(d) Recommended guidelines for rational and equitable statewide tuition rates and fees for public institutions. The commission shall identify public

policy issues relating to tuition and fees of the public postsecondary educational institutions in the state. The recommended guidelines shall take into account the role and mission of each public institution and the need to maximize access to public postsecondary education regardless of a student's financial circumstance;

(e) In conjunction with and consistent with its recommended guidelines on admission standards, recommended guidelines which place the primary emphasis at the community college level for postsecondary education remedial programs and reduce the role of the University of Nebraska in offering remedial programs. The commission shall collaborate with the Commissioner of Education to develop recommendations for secondary schools designed to reduce the need for remedial or developmental programs at the postsecondary level;

(f) In consultation with the governing boards or their designated representatives, designation of geographic and programmatic service areas for each public institution consistent with role and mission assignments. Except as permitted by the commission pursuant to section 85-1414, after July 1, 1992, no public institution shall provide programs at any site outside its assigned geographic and programmatic service area unless permitted under rules and regulations adopted and promulgated by the commission;

(g) After consultation with the governing boards and experts from outside the State of Nebraska, the establishment of a peer group or groups for each public institution for purposes of budget review. In fulfilling this charge, the commission may accept a peer group determined by a governing board in consultation with out-of-state experts;

(h) Effective use of information technologies and telecommunications to aid in the delivery of instruction at the postsecondary level. In cooperation with the Nebraska Educational Telecommunications Commission, other state agencies, and, when appropriate, representatives of elementary and secondary public education, the commission may assist in the development of instructional delivery systems employing information technologies and telecommunications. The commission, with the involvement of faculties, public institutions and private postsecondary educational institutions, and the information technology and telecommunications community, shall establish policies to ensure that the objectives of quality and efficiency are met in the delivery of information technology and telecommunications-aided instruction;

(i) Workforce development. The commission shall explore methods to improve the competitive quality of the work force and shall encourage enhanced communications and partnerships between public institutions and business and industry;

(j) Public service activities. The public institutions shall develop and provide to the commission a comprehensive inventory of public service programs and activities of public institutions; and

(k) Financial aid strategy. The commission shall develop a state strategy for state-supported student financial aid programs with the goal of assuring access to and choice in postsecondary education in Nebraska for Nebraska residents within the limits of available state resources.

(7) The commission shall develop a unified statewide facilities plan in consultation with the governing boards or their designated representatives and update the plan periodically.

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1414**

(8) Prior to March 15 of the year following the year of adoption of the revised comprehensive statewide plan for postsecondary education required by subsection (2) of this section and prior to March 15 of the year following a year in which any revision is made to the comprehensive statewide plan, the Education Committee of the Legislature shall review the comprehensive statewide plan and revisions thereto at a public hearing and report its findings to the Legislature.

**Source:** Laws 1991, LB 663, § 16; Laws 1993, LB 239, § 20; Laws 1994, LB 683, § 19; Laws 1999, LB 816, § 15; Laws 2003, LB 7, § 6.

**85-1414 Programs; capital construction projects; review; commission, public institutions, and governing boards; duties.**

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall establish an ongoing process to review, monitor, and approve or disapprove the new and existing programs of public institutions and proposed capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive statewide plan and to prevent unnecessary duplication. When complying with requests for information during the review, monitoring, and approval process, public institutions may comply pursuant to section 85-1417.

(2)(a) Governing boards shall submit to the commission all proposals for any new program after the governing board has approved the program and prior to implementation of the program. Except for programs submitted for conditional approval by the commission pursuant to subdivision (b) of this subsection, the commission shall have ninety days from the date the program was submitted to take action to approve or disapprove a program or it shall stand approved. The commission shall establish a waiver process for specific, short-term job training programs and short-term public service programs as defined by the commission. New programs submitted for review may be approved or disapproved in whole or in part and with or without recommended modifications based on criteria established pursuant to subsection (7) of this section.

(b) After approval of the program by the governing board, the governing board may submit a proposal for a program which is not authorized by the role and mission provisions of sections 85-917 to 85-966 to the commission for conditional approval. Within one hundred twenty days from its receipt of the proposal, the commission shall report to the Legislature its recommendation in support for or opposition to the amendments to the role and mission statutes that would be necessary for the commission to approve the program and for the institution to offer the program. The time period for submission of the report may be extended for up to an additional ninety days by resolution of the commission which shall show good cause why the extent of review required for this particular proposal necessitates an extension of time to complete the review. Such extension shall be filed with the chairperson of the Education Committee of the Legislature prior to the expiration of the initial one hundred twenty days. The report shall contain supporting rationale for the commission's position, such additional comments as the commission deems appropriate and, in the event the commission supports the amendments to the role and mission statutes, the commission's specific recommendation as to the form of such

amendments. If the report indicates support for the necessary amendments to the role and mission statutes, the report shall also constitute the commission's conditional approval of the program, unless the report specifically indicates disapproval of the program. If the necessary amendments to the role and mission statutes supported by the commission in its report to the Legislature are subsequently enacted by the Legislature, the program shall stand approved. Nothing in this section for conditional approval shall be construed to affect the commission's future consideration of such proposal or approval or disapproval of any programs affected by the proposal.

(3) Following approval of a new program, such program shall be added to the schedule of existing programs to be reviewed by the commission. Following consultation with the governing board, new programs approved by the commission may also be required to meet, within a reasonable time as stipulated by the commission, minimum performance standards established by the commission pursuant to its rules and regulations. If a program fails to meet minimum performance standards, the commission shall review the program and may continue or withdraw its approval for the program.

(4) Existing programs shall be reviewed by the commission pursuant to a program review process established by the commission in consultation with the governing boards or their designated representatives which, to the extent possible while still allowing for timely review by the commission, shall coincide with institutional review and accreditation cycles. In reviewing existing programs, the commission may make use of nonconfidential information and conclusions provided by accreditation processes supplied to the commission by the institutions. All programs in existence prior to January 1, 1992, shall be considered approved until the approval is confirmed or withdrawn by the commission pursuant to the program review process conducted by the commission.

(5) Existing programs which do not meet criteria established by the commission pursuant to subsection (7) of this section shall be targeted for indepth review by the public institutions and their governing boards. In performing such indepth review, institutions may make use of information and conclusions provided by accreditation and other established and ongoing academic review processes rather than providing for a separate review process. Programs continued by the governing boards shall be further monitored by the governing board which shall report the status and process of the monitoring to the commission. If the commission determines that a program does not merit continuation, it shall hold a public hearing, following thirty days' notice to the public institution, to consider if the program should be continued. Following the hearing, the commission shall take action to approve or disapprove continuance of the program.

(6) Existing programs disapproved for continuance by the commission shall be terminated by a public institution when all students in the program on the date of the decision of the commission to disapprove continuance of the program have had a reasonable opportunity, as determined by the governing board of the public institution, to complete the program. Existing public service programs disapproved for continuance by the commission shall be terminated at the end of the fiscal year in which the decision to disapprove is made.

(7) The commission shall establish criteria for the review, monitoring, and approval or disapproval of programs. The governing boards of the public

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1414**

institutions shall be responsible for assuring the quality and effectiveness of programs offered by their institutions. The commission's criteria shall be designed to (a) meet educational needs and (b) assure efficiency and avoid unnecessary duplication. Criteria shall include:

- (i) Centrality to the role and mission of the public institution;
- (ii) Consistency with the comprehensive statewide plan;
- (iii) Evidence of need and demand; and
- (iv) Adequacy of resources to support proposed new programs.

The criteria shall not infringe on the prerogative of the governing boards to make decisions on the quality of staff and the design of curriculum.

(8) The commission shall develop specific criteria for review, monitoring, and approval or disapproval of participation by any public institution in proposed or existing education centers in addition to the criteria specified in this section. Participation by a public institution in an education center shall also be approved by the governing board of such public institution. The commission shall develop policies and procedures for conducting and approving off-campus programming in an education center.

(9) Each public institution shall submit its most recent institutional facilities plan to the commission subject to commission guidelines for the format and content of such plans. The commission shall (a) review each institutional facilities plan to ensure (i) consistency with the comprehensive statewide plan, statewide facilities plan, and institutional role and mission assignments and (ii) identification of unnecessary duplication of facilities and (b) make a written report of its review to the governing board of the public institution within ninety days after receipt of the institutional facilities plan. The commission may, in accordance with the coordination function of the commission pursuant to section 85-1403, recommend modifications to the institutional facilities plans and may require submission of periodic updates of the institutional facilities plans.

(10) Governing boards shall submit all proposed capital construction projects which utilize tax funds designated by the Legislature to the commission for review and approval or disapproval. The commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review, monitor, and approve or disapprove each such capital construction project to provide compliance and consistency with the statewide facilities plan and the comprehensive statewide plan and to prevent unnecessary duplication of capital facilities. The commission may disapprove a project only on the basis of a finding by the commission that the project (a) does not comply or is inconsistent with one or more provisions of the statewide facilities plan or other relevant provisions of the comprehensive statewide plan or (b) will result in unnecessary duplication of capital facilities.

(11) In fulfilling its program and project approval activities prescribed in this section, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of both public and independent and private postsecondary educational institutions.

(12) Any program which is authorized by action of the Legislature or a governing board and which is not in existence prior to January 1, 1992, shall

not become operative unless and until such program has been approved by the commission pursuant to this section.

**Source:** Laws 1991, LB 663, § 17; Laws 1994, LB 683, § 20; Laws 1999, LB 816, § 16; Laws 2003, LB 7, § 7; Laws 2006, LB 196, § 4.

**85-1415 Capital construction projects proposed by Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, and certain nonprofit corporations; review; commission; duties; approval by Legislature.**

(1) Consistent with the authority granted to the Legislature pursuant to Article XIII, section 1, of the Constitution of Nebraska, the commission shall review all capital construction projects proposed by the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges pursuant to sections 85-404 and 85-408 and by any nonprofit corporation created by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges when (a) state general funds, (b) funds received by the University of Nebraska or any state college for the purposes of reimbursing overhead costs and expenses in connection with any federal or other grant or contract, (c) tuition, or (d) the state's operating investment pool investment income constitute all or any part of the funds used for the repayment of all or any part of the bonds of such nonprofit corporation. Such boards shall submit all such projects, including applicable financing plans, to the commission for review.

(2) Within sixty days from the date of submission of a proposed project, the commission shall take action by recommending that the Legislature or the Executive Board of the Legislative Council either approve or disapprove the project. Following such action by the commission, each such proposed project together with the commission's recommendation of approval or disapproval shall be submitted by the board concerned to the Legislature or to the Executive Board of the Legislative Council. The Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council shall thereafter take action to approve or disapprove the proposed project.

**Source:** Laws 1991, LB 663, § 18; Laws 1992, LB 976, § 1; Laws 1994, LB 683, § 21; Laws 2004, LB 1071, § 1.

**85-1416 Budget and state aid requests; review; commission; duties.**

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review and modify, if needed to promote compliance and consistency with the comprehensive state-wide plan and prevent unnecessary duplication, the budget requests of the governing boards.

(2)(a) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission an outline of its proposed operating budget. The outline of its proposed operating budget or outline of proposed state aid request shall include those information

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1416**

summaries provided to the institution's governing board describing the respective institution's budget for the next fiscal year or biennium. The outline shall contain projections of funds necessary for (i) the retention of current programs and services at current funding levels, (ii) any inflationary costs necessary to maintain current programs and services at the current programmatic or service levels, and (iii) proposed new and expanded programs and services. In addition to the outline, the commission may request an institution to provide to the commission any other supporting information to assist the commission in its budget review process. An institution may comply with such requests pursuant to section 85-1417.

(b) On September 15 of each biennial budget request year, the boards of governors of the community colleges or their designated representatives shall submit to the commission outlines of their proposed state aid requests pursuant to the Community College Foundation and Equalization Aid Act.

(c) The commission shall analyze institutional budget priorities in light of the comprehensive statewide plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the comprehensive statewide plan. If an institution does not comply with the commission's request pursuant to subdivision (a) of this subsection for additional budget information, the commission may so note the refusal and its specific information request in its report of budget recommendations. The commission shall also provide to the Governor and the Appropriations Committee of the Legislature on or before October 1 of each even-numbered year a report identifying public policy issues relating to student tuition and fees, including the appropriate relative differentials of tuition and fee levels between the sectors of public postsecondary education in the state consistent with the comprehensive statewide plan.

(3) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission information the commission deems necessary regarding each board's capital construction budget requests. The commission shall review the capital construction budget request information and may recommend to the Governor and the Legislature modification, approval, or disapproval of such requests consistent with the statewide facilities plan and any project approval determined pursuant to subsection (10) of section 85-1414 and to section 85-1415. The commission shall develop from a statewide perspective a unified prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and the Legislature for their consideration. In establishing its prioritized list, the commission may consider and respond to the priority order established by the Board of Regents or the Board of Trustees in their respective capital construction budget requests.

§ 85-1416 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(4) Nothing in this section shall be construed to affect other constitutional, statutory, or administrative requirements for the submission of budget or state aid requests by the governing boards to the Governor and the Legislature.

**Source:** Laws 1991, LB 663, § 19; Laws 1993, LB 239, § 21; Laws 1994, LB 683, § 22; Laws 1999, LB 816, § 17; Laws 2002, Second Spec. Sess., LB 12, § 5; Laws 2006, LB 962, § 5; Laws 2007, LB342, § 38.

**Cross References**

Community College Foundation and Equalization Aid Act, see section 85-2201.

**85-1417 Reports to commission; form.**

Each public institution may file with the commission a copy of any report filed with any other state agency. The filing shall be either in an electronic format compatible with the commission's computer system or a paper copy. A public institution may respond to any requests for information from the commission by providing the commission with the exact location of the information within a report that has previously been filed with the commission.

**Source:** Laws 1999, LB 816, § 18.

**85-1418 Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure.**

(1) No state warrant shall be issued by the Department of Administrative Services or used by any public institution for the purpose of funding any program or capital construction project which has not been approved or which has been disapproved by the commission pursuant to the Coordinating Commission for Postsecondary Education Act. If state funding for any such program or project cannot be or is not divided into warrants separate from other programs or projects, the department shall reduce a warrant to the public institution which includes funding for the program or project by the amount of tax funds designated by the Legislature which are budgeted in that fiscal year by the public institution for use for the program or project.

(2) The department may reduce the amount of state aid distributed to a community college area pursuant to the Community College Foundation and Equalization Aid Act by the amount of funds used by the area to provide a program or capital construction project which has not been approved or which has been disapproved by the commission.

(3) The district court of Lancaster County shall have jurisdiction to enforce an order or decision of the commission entered pursuant to the Coordinating Commission for Postsecondary Education Act and to enforce this section.

(4) Any person or public institution aggrieved by a final order of the commission entered pursuant to section 85-1413, 85-1414, 85-1415, or 85-1416 shall be entitled to judicial review of the order. Proceedings for review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after public notice of the final decision by the commission is given. The filing of the petition or the service of summons upon the commission shall not stay enforcement of such order. The review shall be conducted by the court without a jury on the record of the commission. The court shall have jurisdiction to enjoin enforcement of any order of the commission which is (a) in violation of constitutional provisions, (b) in excess of the constitutional or

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1420**

statutory authority of the commission, (c) made upon unlawful procedure, or (d) affected by other error of law.

(5) A party may secure a review of any final judgment of the district court by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

**Source:** Laws 1991, LB 663, § 21; Laws 1992, LB 360, § 40; Laws 1993, LB 239, § 22; Laws 2007, LB 342, § 39.

**Cross References**

**Community College Foundation and Equalization Aid Act**, see section 85-2201.

**85-1419 Coordinating Commission for Postsecondary Education Cash Fund; created; use; investment.**

There is hereby created the Coordinating Commission for Postsecondary Education Cash Fund. The fund shall contain money received from application fees from out-of-state institutions of higher and postsecondary education seeking authorization to offer courses and programs in the State of Nebraska and from private colleges seeking provisional accreditation and money received by the commission for services rendered incident to the administration of its statutory or contractual functions. The fund shall be expended for the administrative costs of reviewing applications, publishing and duplicating reports, coordinating studies, conducting conferences, and other related activities as may be authorized by the Legislature or by contract. All such money received by the commission shall be remitted to the State Treasurer for credit to the fund. A report on the receipts and expenditures from the fund shall be included as a part of the operating budget request submitted to the Legislature and the Governor. Any money in the 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.

**Source:** Laws 1991, LB 663, § 22; Laws 1994, LB 683, § 23; Laws 1994, LB 1066, § 138.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**85-1420 Coordinating Commission for Postsecondary Education Trust Fund; created; use; investment.**

There is hereby created the Coordinating Commission for Postsecondary Education Trust Fund. The fund shall serve as a revolving fund to receive grants from foundations, institutions, or individuals for specific studies which are a part of the powers and duties of the commission or for the administration of privately endowed scholarship programs for students attending Nebraska institutions. The grant money shall be used only for purposes specified in the grant. A report of the findings of any studies done pursuant to the grants shall be included as a part of the operating budget request submitted to the Legislature and the Governor. Any money in the fund available for investment

§ 85-1420 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1991, LB 663, § 23; Laws 1994, LB 683, § 24; Laws 1994, LB 1066, § 139; Laws 1999, LB 816, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(b) NEBRASKA EDUCATIONAL DATA SYSTEM

**85-1421 Legislative intent.**

The Legislature hereby declares that it is the intent and purpose of sections 85-1421 to 85-1427 to provide for a state-level uniform information system for all public postsecondary education systems and institutions which will:

(1) Provide for a coordinated state-level information base regarding the activities of the public postsecondary education systems and institutions;

(2) Insure that the Legislature and other state and federal agencies obtain timely and accurate information concerning the programs, personnel, students, finances, and facilities of the state's postsecondary education systems and institutions;

(3) Maintain procedures for the uniform definition and reporting of information;

(4) Avoid unnecessary, duplicative, and conflicting information requests by state-level agencies through the uniform definition and collection of data elements, identification of data necessary for annual reporting to the state, and development of uniform and comparable data classification systems;

(5) Provide information users and suppliers an opportunity to cooperatively maintain a uniform information system; and

(6) Maintain an information base to support state-level planning, budgeting, and performance evaluation activities for postsecondary education.

**Source:** Laws 1978, LB 897, § 1; R.S.1943, (1987), § 85-968; Laws 1994, LB 683, § 25.

**85-1422 Terms, defined.**

For purposes of sections 85-1421 to 85-1427:

(1) Commission shall mean the Coordinating Commission for Postsecondary Education; and

(2) Information system shall mean the uniform information system established by such sections and known as the Nebraska Educational Data System.

**Source:** Laws 1978, LB 897, § 2; Laws 1991, LB 663, § 106; Laws 1992, LB 988, § 18; R.S.Supp.,1992, § 85-969; Laws 1994, LB 683, § 26.

**85-1423 Commission; postsecondary education information system; duties.**

The commission shall maintain a comprehensive state-level public postsecondary education information system. After consulting with the governing boards or their designated representatives, the commission shall:

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION § 85-1427**

- (1) Identify the state-level information to be reported on an annual or periodic basis regarding each postsecondary system's and institution's programs, personnel, finances, students, and facilities utilization and inventory;
- (2) Identify the data elements for which information will be collected and reported to the state;
- (3) Identify the information classification formats to be used by the postsecondary systems and institutions in presenting program, financial, student, facility, personnel, and audit information;
- (4) Identify the data-collection, reporting, and auditing procedures for the information system; and
- (5) Identify a procedure for updating the information system to meet changing conditions.

**Source:** Laws 1978, LB 897, § 3; R.S.1943, (1987), § 85-970; Laws 1994, LB 683, § 27; Laws 1999, LB 816, § 20.

**85-1424 Commission; verification and reporting duties.**

The commission shall:

- (1) Review and verify all information submitted by public postsecondary systems and institutions as part of the Integrated Postsecondary Education Data System and make such corrections in the submitted information as are necessary; and
- (2) Prepare and disseminate an annual report of the information submitted by each public postsecondary system and institution and those private postsecondary educational institutions willing to cooperate as part of the Integrated Postsecondary Education Data System.

**Source:** Laws 1978, LB 897, § 7; Laws 1984, LB 290, § 8; Laws 1988, LB 927, § 3; Laws 1991, LB 663, § 109; R.S.Supp.,1992, § 85-974; Laws 1994, LB 683, § 28.

**85-1425 Commission; solicit advice.**

The commission shall provide ongoing means for information suppliers and users to advise the commission in carrying out sections 85-1421 to 85-1427.

**Source:** Laws 1978, LB 897, § 8; Laws 1985, LB 421, § 5; Laws 1991, LB 663, § 110; R.S.Supp.,1992, § 85-975; Laws 1994, LB 683, § 29.

**85-1426 Postsecondary education system and institution; report.**

Each public postsecondary education system and institution shall report information as required by the commission pursuant to sections 85-1421 to 85-1427.

**Source:** Laws 1978, LB 897, § 9; Laws 1991, LB 663, § 111; R.S.Supp.,1992, § 85-976; Laws 1994, LB 683, § 30.

**85-1427 Commission; administrative duties.**

In order to carry out its responsibilities under sections 85-1421 to 85-1427, the commission shall:

§ 85-1427 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

- (1) Periodically meet and confer with officials of the state and its political subdivisions having responsibility for postsecondary education services;
- (2) Consult with and utilize the services of any office, department, or agency of the state; and
- (3) Employ such personnel as may be necessary to assist it in the performance of its duties.

**Source:** Laws 1978, LB 897, § 12; Laws 1991, LB 663, § 114; R.S.Supp.,1992, § 85-979; Laws 1994, LB 683, § 31.

(c) LEGISLATIVE PRIORITIES

**85-1428 Economic expansion and diversification; postsecondary education priorities; legislative findings.**

The Legislature finds that:

- (1) Expansion and diversification of Nebraska's economy is necessary in order to sustain essential public services sponsored or aided by the state;
- (2) Increasing the number of Nebraskans with high levels of educational attainment is essential to support economic expansion and diversification;
- (3) In order to increase the number of Nebraskans with high levels of educational attainment, the state's postsecondary education system shall include, but not be limited to, the following key priorities that were identified by the LR 174 Task Force of 2003:
  - (a) Increasing the number of students who enter postsecondary education in Nebraska;
  - (b) Increasing the percentage of students who enroll and successfully complete a degree; and
  - (c) Reducing, eliminating, and then reversing the net out-migration of Nebraskans with high levels of educational attainment; and
  - (4) Unprecedented collaboration and cooperation between and among educational institutions and sectors will be necessary to develop community, regional, and statewide strategies to achieve progress toward these priorities and to assist the state in serving Nebraska students and allowing them to reach their academic caliber.

**Source:** Laws 2006, LB 962, § 7.

**85-1429 Commission; report on higher education priorities.**

On or before March 15 of each year, the Coordinating Commission for Postsecondary Education shall provide a report that evaluates progress toward attainment of the priorities listed in subdivision (3) of section 85-1428. The Education Committee of the Legislature shall review the report at a public hearing and report its findings to the Legislature.

**Source:** Laws 2006, LB 962, § 8.

**ARTICLE 15  
COMMUNITY COLLEGES**

**Cross References**

**High school equivalency diploma**, acceptance, see section 79-733.  
**State Department of Education**, loans to needy students, see section 79-2,106.

- Section
- 85-1501. Declaration of intent and purpose.
- 85-1501.01. Financing; legislative intent.
- 85-1502. Area governance and statewide coordination; legislative intent; association of boards; powers and duties; section, how construed.
- 85-1503. Terms, defined.
- 85-1504. Community college areas, designated.
- 85-1505. Community college area; body corporate.
- 85-1506. Community College Board of Governors; membership.
- 85-1507. Boards; officers; quorum required to perform duties.
- 85-1508. Community college area officers and employees; bond.
- 85-1509. Board; members; expenses.
- 85-1510. Community college area; power to indemnify; liability insurance; purchase.
- 85-1511. Board; powers and duties; enumerated.
- 85-1512. Boards; establish election districts; nomination and election of members; qualifications.
- 85-1513. Repealed. Laws 1994, LB 76, § 615.
- 85-1514. Vacancy on board; procedure to fill; qualifications of member filling vacancy.
- 85-1515. Board; power to sell revenue and general obligation bonds; purpose; sinking fund; purpose; election required; when; state liability.
- 85-1516. Board; power to issue warrants; purpose; limitation; obligation of area; how paid.
- 85-1517. Board; power to certify tax levy; limit; purpose; approval required to raise levy over limit; how collected.
- 85-1518. Tax funds; voter approval required; procedure.
- 85-1519. Capital construction project; bids; board; adopt plans and specifications.
- 85-1520. Facilities; construct, purchase, repair, and equip; revenue bonds; authorized.
- 85-1521. Revenue bonds; pledge of revenue; payment; board; powers and duties; bonds not obligation of state.
- 85-1522. Revenue bonds; where payable.
- 85-1523. Revenue bond proceeds; use; board; establish charges.
- 85-1524. Revenue refunding bonds; authorized.
- 85-1525. Board; furnish utilities.
- 85-1526. Bonds; interest; exempt from taxation.
- 85-1527. Board; bonds; powers.
- 85-1528. Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.
- 85-1529. Teachers and school nurses; additional contract rights; not affected.
- 85-1530. Board; adopt reduction-in-force policy; contents.
- 85-1531. Reduction in force; board and administration; duties.
- 85-1532. Reduction in force; employee; contract terminated; effect; recall; rights.
- 85-1533. Reduction in force; noncompliance with federal or state law; how treated.
- 85-1534. Contract; probationary period required.
- 85-1534.01. Leave of absence; effect.
- 85-1535. Facilities for applied technology educational programs; contracts authorized; costs.
- 85-1536. Transferred to section 85-2222.
- 85-1536.01. Repealed. Laws 2007, LB 342, § 46.
- 85-1537. Repealed. Laws 2007, LB 342, § 46.
- 85-1537.01. Repealed. Laws 2003, LB 540, § 13.
- 85-1538. Transferred to section 85-2229.
- 85-1539. Nebraska Community College Aid, Grant, and Contract Review Committee; created; duties.
- 85-1540. Nebraska Community College Aid Cash Fund; created; use; investment.
- 85-1541. Activities pass; volunteer, defined.
- 85-1542. Activities pass; authorized; when.

**85-1501 Declaration of intent and purpose.**

The Legislature hereby declares that for a community college to be truly responsible to the people it serves, primary control of such colleges shall be placed in the citizens within the local area so served subject to coordination by the Coordinating Commission for Postsecondary Education. It is the intent and purpose of sections 85-1501 to 85-1540 to create locally governed and locally supported community college areas with the major educational emphasis on occupational education. Each community college area is intended to be an independent, local, unique, and vital segment of postsecondary education separate from both the established elementary and secondary school system and from other institutions of postsecondary education and is not to be converted into a four-year, baccalaureate-degree-granting institution.

**Source:** Laws 1975, LB 344, § 1; Laws 1988, LB 802, § 29; Laws 1991, LB 663, § 44; R.S.Supp., 1992, § 79-2636; Laws 1993, LB 239, § 23; Laws 1997, LB 269, § 66.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

#### **85-1501.01 Financing; legislative intent.**

The Legislature recognizes the need for and importance of a strong partnership with the community colleges to assure the continued economic growth of the state. In recognition of that partnership, the Legislature affirms that community colleges should be financed through a funding partnership from property tax, state aid, tuition, and other sources of revenue.

**Source:** Laws 1997, LB 269, § 67.

#### **85-1502 Area governance and statewide coordination; legislative intent; association of boards; powers and duties; section, how construed.**

(1) It is the intent of the Legislature that a clear distinction between area governance and statewide coordination for the community college areas be recognized and that such coordination is appropriate in order to provide the most cost-effective programs for residents of each community college area. It is further the intent of the Legislature that coordination of the community colleges by the Coordinating Commission for Postsecondary Education be conducted through an association of the boards.

(2) All of the boards shall be a part of and shall be represented by such association. Coordination services provided by such association shall include (a) preparation of a system strategic plan, (b) coordination of the budget request for the biennium, (c) facilitation of program-needs assessment and articulation, (d) recommendation and facilitation of the appointment of representatives to committees, boards, commissions, task forces, and any other state-level bodies requesting or requiring participation from the community college system, and (e) facilitation of responses to data and information requests for the system.

(3) All activities conducted pursuant to this section by such association shall be conducted in accordance with the Open Meetings Act.

(4) Nothing in this section shall be construed to require or provide for state control of the operations of any community college area or to abridge the governance ability, rights, or responsibilities of any board. Nothing in this section shall be construed to limit the ability or authority of the commission to

fulfill its responsibilities and duties regarding the individual community college areas and the individual community college area campuses.

**Source:** Laws 1991, LB 625, § 1; Laws 1991, LB 663, § 46; R.S.Supp.,1992, § 79-2636.01; Laws 1993, LB 239, § 24; Laws 2004, LB 821, § 43.

**Cross References**

Open Meetings Act, see section 84-1407.

**85-1503 Terms, defined.**

For purposes of sections 85-1501 to 85-1540, unless the context otherwise requires:

(1) Community college means an educational institution operating and offering programs pursuant to such sections;

(2) Community college area means an area established by section 85-1504;

(3) Board means the Community College Board of Governors for each community college area;

(4) Full-time equivalent student means, in the aggregate, the equivalent of a registered student who in a twelve-month period is enrolled in (a) thirty semester credit hours or forty-five quarter credit hours of classroom, laboratory, clinical, practicum, or independent study course work or cooperative work experience or (b) nine hundred contact hours of classroom or laboratory course work for which credit hours are not offered or awarded. Avocational and recreational community service programs or courses are not included in determining full-time equivalent students or student enrollment;

(5) Contact hour means an educational activity consisting of sixty minutes minus break time and required time to change classes;

(6) Credit hour means the unit used to ascertain the educational value of course work offered by the institution to students enrolling for such course work, earned by such students upon successful completion of such course work, and for which tuition is charged. A credit hour may be offered and earned in any of several instructional delivery systems, including, but not limited to, classroom hours, laboratory hours, clinical hours, practicum hours, cooperative work experience, and independent study. A credit hour shall consist of a minimum of: (a) Ten quarter or fifteen semester classroom contact hours per term of enrollment; (b) twenty quarter or thirty semester academic transfer and academic support laboratory hours per term of enrollment; (c) thirty quarter or forty-five semester vocational laboratory hours per term of enrollment; (d) thirty quarter or forty-five semester clinical or practicum contact hours per term of enrollment; or (e) forty quarter or sixty semester cooperative work experience contact hours per term of enrollment. An institution may include in a credit hour more classroom, laboratory, clinical, practicum, or cooperative work experience hours than the minimum required in this subdivision. The institution shall publish in its catalog, or otherwise make known to the student in writing prior to the student enrolling or paying tuition for any courses, the number of credit or contact hours offered in each such course. Such published credit or contact hour offerings shall be used to determine whether a student is a full-time equivalent student pursuant to subdivision (4) of this section;

(7) Classroom hour means a minimum of fifty minutes of formalized instruction on campus or off campus in which a qualified instructor applying any combination of instructional methods such as lecture, directed discussion, demonstration, or the presentation of audiovisual materials is responsible for providing an educational experience to students;

(8) Laboratory hour means a minimum of fifty minutes of educational activity on campus or off campus in which students conduct experiments, perfect skills, or practice procedures under the direction of a qualified instructor;

(9) Clinical hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experience under constant supervision at a health-related agency, receives individual instruction in the performance of a particular function, and is observed and critiqued in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of students and for the delivery of part of the didactic phase of the experience;

(10) Practicum hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experiences, receives individual instruction in the performance of a particular function, and is observed and critiqued by an instructor in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of the students;

(11) Cooperative work experience means an internship or on-the-job training, designed to provide specialized skills and educational experiences, which is coordinated, supervised, observed, and evaluated by qualified college staff or faculty and may be completed on campus or off campus, depending on the nature of the arrangement;

(12) Independent study means an arrangement between an instructor and a student in which the instructor is responsible for assigning work activity or skill objectives to the student, personally providing needed instruction, assessing the student's progress, and assigning a final grade. Credit hours shall be assigned according to the practice of assigning credits in similar courses;

(13) Full-time equivalent student enrollment total means the total of full-time equivalent students enrolled in a community college in any fiscal year;

(14) General academic transfer course means a course offering in a one-year or two-year degree-credit program, at the associate degree level or below, intended by the offering institution for transfer into a baccalaureate program. The completion of the specified courses in a general academic transfer program may include the award of a formal degree;

(15) Applied technology or occupational course means a course offering in an instructional program, at the associate degree level or below, intended to prepare individuals for immediate entry into a specific occupation or career. The primary intent of the institutions offering an applied technology or occupational program shall be that such program is for immediate job entry. The completion of the specified courses in an applied technology or occupational program may include the award of a formal degree, diploma, or certificate;

(16) Academic support course means a general education academic course offering which may be necessary to support an applied technology or occupational program;

(17) Class 1 course means an applied technology or occupational course offering which requires the use of equipment, facilities, or instructional methods easily adaptable for use in a general academic transfer program classroom or laboratory;

(18) Class 2 course means an applied technology or occupational course offering which requires the use of specialized equipment, facilities, or instructional methods not easily adaptable for use in a general academic transfer program classroom or laboratory;

(19) Full-time equivalent student means a full-time equivalent student subject to the following limitation: The number of credit and contact hours which shall be counted by any community college area in which a tribally controlled community college is located shall include credit and contact hours awarded by such tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the Tribally Controlled Community College Assistance Act, 25 U.S.C. 1801;

(20) Full-time equivalent total means the total of all full-time equivalents accumulated in a community college area in any fiscal year;

(21) Reimbursable educational unit means a full-time equivalent student multiplied by (a) for a general academic transfer course or an academic support course, a factor of one, (b) for a Class 1 course, a factor of one and fifty-hundredths, (c) for a Class 2 course, a factor of two, (d) for a tribally controlled community college general academic transfer course or academic support course, a factor of two, (e) for a tribally controlled community college Class 1 course, a factor of three, and (f) for a tribally controlled community college Class 2 course, a factor of four;

(22) Reimbursable educational unit total means the total of all reimbursable educational units accumulated in a community college area in any fiscal year;

(23) Special instructional term means any term which is less than fifteen weeks for community colleges using semesters or ten weeks for community colleges using quarters;

(24) Statewide reimbursable full-time equivalent total means the total of all reimbursable full-time equivalents accumulated statewide for the community college in any fiscal year;

(25) Tribally controlled community college means an educational institution operating and offering programs pursuant to the Tribally Controlled Community College Assistance Act, 25 U.S.C. 1801; and

(26) Tribally controlled community college state aid amount means the quotient of the amount of state aid to be distributed pursuant to the Community College Foundation and Equalization Aid Act for the current fiscal year to a community college area in which a tribally controlled community college is located divided by the reimbursable educational unit total for such community college area for the immediately preceding fiscal year, with such quotient then multiplied by the average reimbursable educational units derived pursuant to subdivision (19) of this section for the immediately preceding fiscal year.

**Source:** Laws 1975, LB 344, § 2; Laws 1977, LB 459, § 10; Laws 1979, LB 363, § 1; Laws 1984, LB 890, § 1; Laws 1987, LB 329, § 1; Laws 1988, LB 802, § 30; Laws 1991, LB 663, § 45; Laws 1992, LB 921, § 1; R.S.Supp., 1992, § 79-2637; Laws 1993, LB 239,

§ 85-1503 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

§ 25; Laws 1995, LB 241, § 1; Laws 1997, LB 269, § 68; Laws 1999, LB 67, § 1; Laws 2005, LB 38, § 3; Laws 2007, LB 342, § 40.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1504 Community college areas, designated.

The state is hereby divided into six community college areas as follows:

(1) The Western Community College Area shall consist of the following counties: Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, and Grant and the voting districts of Merriam, Russell, King, Mother Lake, Cody, Barley, Gillaspie, Lackey, and Calf Creek in Cherry County as such voting districts existed on July 1, 1975;

(2) The Mid-Plains Community College Area shall consist of the following counties: Cherry except as provided in subdivision (1) of this section, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow;

(3) The Northeast Community College Area shall consist of the following counties: Keya Paha, Brown, Rock, Boyd, Holt, Garfield, Wheeler, Knox, Cedar, Antelope, Pierce, Madison, Wayne, Stanton, Dixon, Dakota, Thurston, Burt, and Cuming and the precincts of North Oakland, South Oakland, Ashland, North Branch, Shell Creek, and Midland in Boone County as such precincts existed on July 1, 1975;

(4) The Central Community College Area shall consist of the following counties: Valley, Greeley, Platte, Colfax, Sherman, Howard, Nance, Merrick, Polk, Butler, Dawson, Buffalo, Hall, Hamilton, Gosper, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Franklin, Webster, and Nuckolls and all of Boone County except as provided in subdivision (3) of this section;

(5) The Southeast Community College Area shall consist of the following counties: Saunders, Cass, York, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson; and

(6) The Metropolitan Community College Area shall consist of the following counties: Dodge, Washington, Douglas, and Sarpy.

Source: Laws 1975, LB 344, § 3; R.S.1943, (1987), § 79-2638; Laws 1993, LB 239, § 26; Laws 1999, LB 596, § 1.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1505 Community college area; body corporate.

Each community college area shall constitute a body corporate and as such may sue and be sued.

Source: Laws 1975, LB 344, § 4; R.S.1943, (1987), § 79-2639; Laws 1993, LB 239, § 27.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

85-1506 Community College Board of Governors; membership.

Each community college area shall be governed by a board composed of eleven members. The governing boards shall be known as the Community College Board of Governors for the community college area the board serves.

**Source:** Laws 1975, LB 344, § 5; Laws 1988, LB 802, § 31; R.S.Supp.,1992, § 79-2640; Laws 1993, LB 239, § 28.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1507 Boards; officers; quorum required to perform duties.**

Each board shall annually elect from among its members a chairperson and a vice-chairperson, each to serve for one year. The board shall appoint a secretary and a treasurer, and one person may hold both such offices. A majority of the members of the board shall constitute a quorum, and no action shall be taken by less than a majority of the members present and voting, except that approval of employee contracts and the appropriation of money from the funds of the community college area shall be by the affirmative vote of a majority of elected members of the board. For purposes of this section, appropriation shall mean the adoption or modification of budgets for the community college area.

**Source:** Laws 1975, LB 344, § 6; R.S.1943, (1987), § 79-2641; Laws 1993, LB 239, § 29; Laws 1995, LB 372, § 1.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1508 Community college area officers and employees; bond.**

The officers and employees of a community college area authorized to handle funds shall furnish and maintain a corporate surety bond in an amount, in a form, and with sureties approved by the board. A copy of such bond shall be filed with the Secretary of State. The premium on such bond shall be paid by the community college.

**Source:** Laws 1975, LB 344, § 8; R.S.1943, (1987), § 79-2643; Laws 1993, LB 239, § 30.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1509 Board; members; expenses.**

Members of a board shall not receive a per diem. The board may reimburse members for their actual and necessary expenses incurred while carrying out their duties. Mileage expenses shall be computed at the rate provided in section 81-1176. Sections 81-1174, 81-1175, and 81-1177 shall serve as guidelines for the board when determining allowable expenses and reimbursement for such expenses.

**Source:** Laws 1993, LB 239, § 31.

**85-1510 Community college area; power to indemnify; liability insurance; purchase.**

(1) A community college area may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the community college area, by reason of the fact that he or she is or was a board member or

an officer, employee, or agent of the community college area, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if such person acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the community college area and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that such person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the community college area and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A community college area may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the community college area to procure a judgment in its favor by reason of the fact that he or she is or was a board member or an officer, employee, or agent of the community college area, against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the community college area, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person was adjudged to be liable for negligence or misconduct in the performance of his or her duty to the community college area unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court deems proper.

(3) To the extent that a board member or an officer, employee, or agent of a community college area has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (1) and (2) of this section or in defense of any claim, issue, or matter in such action, suit, or proceeding, such person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him or her in connection with such defense.

(4) Any indemnification under such subsections, unless ordered by a court, shall be made by the community college area only as authorized in the specific case upon a determination that indemnification of the board member or the officer, employee, or agent of the community college area is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such subsections. Such determination shall be made by the board members by a majority vote of a quorum consisting of board members who were not parties to such action, suit, or proceeding or, if such a quorum is not obtainable or even if obtainable a quorum of disinterested board members so directs, by independent legal counsel in a written opinion.

(5) Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by a community college area in advance of the final disposition of such action, suit, or proceeding as authorized in the manner

provided in subsection (4) of this section upon receipt of an undertaking by or on behalf of the board member or officer, employee, or agent of the community college area to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the community college area as authorized in this section.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which the person indemnified may be entitled under any agreement, either as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a board member or an officer, employee, or agent of a community college area and shall inure to the benefit of the heirs, executors, and administrators of such person.

(7) A community college area may purchase and maintain insurance on behalf of any person who is or was a board member or an officer, employee, or agent of a community college area against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the community college area would have the power to indemnify him or her against such liability under this section.

**Source:** Laws 1993, LB 239, § 32.

**85-1511 Board; powers and duties; enumerated.**

In addition to any other powers and duties imposed upon the community college system or its areas, campuses, or boards by the Community College Foundation and Equalization Aid Act, sections 85-917 to 85-966 and 85-1501 to 85-1540, and any other provision of law, each board shall:

(1) Have general supervision, control, and operation of each community college within its jurisdiction;

(2) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary Education Act, develop and offer programs of applied technology education, academic transfer programs, academic support courses, and such other programs and courses as the needs of the community college area served may require. The board shall avoid unnecessary duplication of existing programs and courses in meeting the needs of the students and the community college area;

(3) Employ, for a period to be fixed by the board, executive officers, members of the faculty, and such other administrative officers and employees as may be necessary or appropriate and fix their salaries and duties;

(4) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary Education Act, construct, lease, purchase, purchase on contract, operate, equip, and maintain facilities;

(5) Contract for services connected with the operation of the community college area as needs and interest demand;

(6) Cause an examination and comprehensive audit of the books, accounts, records, and affairs, including full-time equivalent student enrollment totals, full-time equivalent totals, and reimbursable educational unit totals as defined in section 85-1503, to be made annually covering the most recently completed fiscal year. The audit of each area shall include the full-time equivalent student

enrollment totals, full-time equivalent totals, and reimbursable educational unit totals for the three most recently completed fiscal years which shall be used for calculation of aid to the community college areas as prescribed in the Community College Foundation and Equalization Aid Act. The audit shall also include the county-certified property valuations for the community college area for the three most recently completed fiscal years which shall be used for calculation of aid to such community college areas. Such examination and audit of the books, accounts, records, and affairs shall be completed and filed with the Auditor of Public Accounts and the Department of Administrative Services on or before October 15 of each year. The examination and audit of the full-time equivalent student enrollment totals, full-time equivalent totals, and reimbursable educational unit totals shall be completed and filed with the Auditor of Public Accounts and the Department of Administrative Services on or before August 15 of each year;

(7) Establish fees and charges for the facilities authorized by sections 85-1501 to 85-1540. Each board may enter into agreements with owners of facilities to be used for housing regarding the management, operation, and government of such facilities and may employ necessary employees to govern, manage, and operate such facilities;

(8) Receive such gifts, grants, conveyances, and bequests of real and personal property from public or private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community college programs as specified by law. Each board may sell, lease, exchange, invest, or expend such gifts, grants, conveyances, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof and adopt and promulgate rules and regulations governing the receipt and expenditure of such proceeds, rents, profits, and income, except that acceptance of such gifts, grants, or conveyances shall not be conditioned on matching state or local funds;

(9) Prescribe the courses of study for any community college under its control and publish such catalogs and bulletins as may be necessary;

(10) Grant to every student upon graduation or completion of a course of study a suitable diploma, associate degree, or certificate;

(11) Adopt and promulgate such rules and regulations and perform all other acts as the board may deem necessary or appropriate to the administration of the community college area. Such rules and regulations shall include, but not be limited to, rules and regulations relating to facilities, housing, scholarships, discipline, and pedestrian and vehicular traffic on property owned, operated, or maintained by the community college area;

(12) Employ, for a period to be fixed by the board, an executive officer for the community college area and, by written order filed in its office, delegate to such executive officer any of the powers and duties vested in or imposed upon it by sections 85-1501 to 85-1540. Such delegated powers and duties may be exercised in the name of the board;

(13) Acquire real property by eminent domain pursuant to sections 76-701 to 76-724;

(14) Acquire real and personal property and sell, convey, or lease such property whenever the community college area will be benefited thereby. The sale, conveyance, or lease of any real estate owned by a community college area

shall be effective only when authorized by an affirmative vote of at least two-thirds of all the members of the board;

(15) Enter into agreements for services, facilities, or equipment and for the presentation of courses for students when such agreements are deemed to be in the best interests of the education of the students involved;

(16) Transfer tribally controlled community college state aid amounts to a tribally controlled community college located within its community college area;

(17) Invest, after proper consideration of the requirements for the availability of money, funds of the community college in securities the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another;

(18) Establish tuition rates for courses of instruction offered by each community college within its community college area. Separate tuition rates shall be established for students who are nonresidents of the State of Nebraska;

(19) Establish a fiscal year for the community college area which conforms to the fiscal year of the state; and

(20) Exercise any other powers, duties, and responsibilities necessary to carry out sections 85-1501 to 85-1540.

**Source:** Laws 1975, LB 344, § 9; Laws 1977, LB 459, § 11; Laws 1978, LB 756, § 52; Laws 1979, LB 363, § 5; Laws 1987, LB 30, § 2; Laws 1988, LB 802, § 32; Laws 1991, LB 663, § 47; R.S.Supp., 1992, § 79-2644; Laws 1993, LB 239, § 33; Laws 1997, LB 269, § 69; Laws 2007, LB 342, § 41.

#### Cross References

**Community College Foundation and Equalization Aid Act**, see section 85-2201.

**Coordinating Commission for Postsecondary Education Act**, see section 85-1401.

This section charges the board of governors of a technical community college with the power, duty, and responsibility of establishing curriculum and employing members of the faculty. *Cross v. Board of Governors*, 204 Neb. 383, 281 N.W.2d 925 (1979).

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. *State ex rel. Western Technical Com. Col. Area v. Tallon*, 196 Neb. 603, 244 N.W.2d 183 (1976).

### **85-1512 Boards; establish election districts; nomination and election of members; qualifications.**

Each board shall divide the community college area into five election districts as nearly equal in population as may be practicable and shall transmit the appropriate information pertaining to such election districts to the Secretary of State and to the appropriate election officials within the area. Board members shall be nominated and elected as provided in section 32-514. To be eligible for membership on the board, a person shall be a registered voter and shall have been a resident of the area for six months and, for members representing a district, a resident of the district for six months. No person shall be eligible to membership on a community college board of governors who is an elected or appointed member of any other board relating to education. Each member elected to represent a district shall be a resident of the district.

**Source:** Laws 1975, LB 344, § 11; Laws 1981, LB 446, § 35; R.S.1943, (1987), § 79-2646; Laws 1993, LB 239, § 34; Laws 1994, LB 76, § 612.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1513 Repealed. Laws 1994, LB 76, § 615.**

**85-1514 Vacancy on board; procedure to fill; qualifications of member filling vacancy.**

(1) In addition to the events listed in section 32-560, a vacancy on any board shall exist in the event of the removal of a board member from the community college area for board members elected at large or community college district for board members elected by district. After notice and hearing, a vacancy shall also exist when any board member is absent from more than three consecutive regular meetings of the board unless such absences are excused by a majority of the remaining board members. In the event of a vacancy from any of such causes or otherwise, such vacancy shall be filled by the remaining board members for the balance of the unexpired term. Any person so named to fill a vacancy shall have the same qualifications as his or her immediate predecessor. Such appointment shall be made in writing and certified to the office of the Secretary of State.

(2) If after a primary election there is a vacancy upon the ballot, such vacancy shall be filled by a petition candidate pursuant to section 32-625.

(3) An incumbent shall not be permitted to hold over the term, but such office shall automatically become vacant and an appointment shall be made within one calendar month to fill such vacancy for the ensuing term. If there are vacancies in the offices of a majority of the members of the board, the Secretary of State shall conduct a special election to fill such vacancies.

**Source:** Laws 1975, LB 344, § 12; Laws 1986, LB 887, § 1; Laws 1989, LB 640, § 11; R.S.Supp., 1992, § 79-2647; Laws 1993, LB 239, § 36; Laws 1994, LB 76, § 613; Laws 2002, LB 251, § 7.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1515 Board; power to sell revenue and general obligation bonds; purpose; sinking fund; purpose; election required; when; state liability.**

Each board may issue and sell revenue bonds and general obligation bonds for the purchase, construction, reconstruction, equipping, demolition, or alteration of capital assets, including accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances and other facilities connected with the operation of the community colleges. Each board may establish in its budget a capital improvement and bond sinking fund. Such fund shall be used (1) first for the retirement of bonds assumed by the board in accordance with the provisions of such bonds, (2) then for (a) renewal work and deferred maintenance as defined in section 81-173, (b) handicapped access and life safety improvements made to existing structures or grounds including accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110, and (c) projects designed to prevent or correct a waste of energy, including measures taken to utilize alternate energy sources, all in accordance with the capital facilities plan of the community college area, (3) then for the retirement of bonds issued pursuant to this section, and (4) then for

the purchasing, purchasing on contract, constructing, and improving of facilities necessary to carry out sections 85-1501 to 85-1540. Revenue bonds issued shall be subject to sections 85-1520 to 85-1527. No general obligation bonds shall be issued without the approval by a majority vote of the qualified electors of the community college area voting in an election called for such purpose pursuant to section 85-1518. No bonds issued under sections 85-1501 to 85-1540 shall be an obligation of the State of Nebraska, and no state tax shall be levied to raise funds for the payment thereof or interest thereon.

**Source:** Laws 1975, LB 344, § 13; Laws 1978, LB 922, § 4; Laws 1980, LB 824, § 1; Laws 1987, LB 329, § 2; Laws 1988, LB 802, § 33; Laws 1992, LB 1001, § 34; R.S.Supp.,1992, § 79-2648; Laws 1993, LB 239, § 37; Laws 1996, LB 900, § 1083; Laws 1997, LB 269, § 70.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1516 Board; power to issue warrants; purpose; limitation; obligation of area; how paid.**

Each board may issue warrants in an amount necessary to finance the operating expenses of the community college area until the proceeds of the tax levy as provided in section 85-1517 are received. The amount of such warrants plus interest shall not exceed the amount of the money to be received from the property tax levy. Whenever such warrants are issued, they shall be the general obligation of the community college area and the full faith and credit of the community college area shall be pledged to retire such warrants. In addition the board shall set aside from the proceeds of the property tax levied pursuant to sections 85-1501 to 85-1540 an amount sufficient to pay the warrants and the interest on such warrants. Such warrants shall be subject to registration as provided in sections 77-2201 to 77-2215.

**Source:** Laws 1975, LB 344, § 14; Laws 1988, LB 802, § 34; R.S.Supp.,1992, § 79-2649; Laws 1993, LB 239, § 38; Laws 1997, LB 269, § 71.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1517 Board; power to certify tax levy; limit; purpose; approval required to raise levy over limit; how collected.**

(1) The board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed the maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars on the taxable valuation of all property subject to the levy within the community college area, uniform throughout such area, for the purpose of supporting operating expenditures of the community college area.

(2)(a) In addition to the levies provided in subsection (1) of this section and this subsection, the board may certify to the county board of equalization of each county within the community college area a tax levy of not to exceed one cent on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, for the purpose of establishing a capital improvement fund and bond sinking fund as provided in section 85-1515.

(b) In addition to the levies provided in subsection (1) of this section and this subsection, the board may also certify to the county board of equalization of each county within the community college area a tax levy on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, in the amount which will produce funds only in the amount necessary to pay for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110. Such tax levy shall not be so certified unless approved by an affirmative vote of a majority of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(c) In addition to the levies provided in subsection (1) of this section and this subsection, the board of any community college area whose valuation per full-time equivalent student was less than eighty-two percent of the statewide average of all community colleges for fiscal year 1997-98 may also certify to the county board of equalization of each county within the community college area a tax levy up to an additional one-half cent for each of fiscal years 2005-06 and 2006-07, on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area. Such tax levy shall not be so certified unless approved by an affirmative vote of three-fourths of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(3) The levy provided by subdivision (2)(a) of this section may be exceeded by that amount necessary to retire the general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4) The tax shall be levied and assessed in the same manner as other property taxes and entered on the books of the county treasurer. The proceeds of the tax, as collected, shall be remitted to the treasurer of the board not less frequently than once each month.

**Source:** Laws 1975, LB 344, § 15; Laws 1978, LB 922, § 5; Laws 1979, LB 363, § 2; Laws 1979, LB 187, § 251; Laws 1980, LB 599, § 16; Laws 1980, LB 824, § 2; Laws 1981, LB 320, § 1; Laws 1984, LB 881, § 1; Laws 1986, LB 796, § 1; Laws 1988, LB 38, § 1; Laws 1990, LB 1050, § 1; Laws 1992, LB 719A, § 197; Laws 1992, LB 1001, § 35; R.S.Supp.,1992, § 79-2650; Laws 1993, LB 239, § 39; Laws 1995, LB 268, § 1; Laws 1996, LB 299, § 32; Laws 1996, LB 900, § 1084; Laws 1996, LB 1114, § 69; Laws 1997, LB 269, § 72; Laws 2005, LB 38, § 4; Laws 2007, LB 342, § 42.

#### Cross References

**Community College Foundation and Equalization Aid Act**, see section 85-2201.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-1518 Tax funds; voter approval required; procedure.**

(1) If a board determines that it is necessary for the proper management and operation of the community college area to expend tax funds in a manner requiring a vote of the people, the board may by resolution place the proposition for such expenditure on the general or primary ballot or call for a special election in such area for the purpose of approving such expenditure. The proposition appearing on the ballot in any election shall state the purpose for which such tax funds will be spent and the amount of funds to be so expended. Such proposition shall be adopted if approved by a majority of those voting in such election.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date of the election and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in such community college area at least twenty days prior to such election. If no newspaper is published in or of general circulation in the community college area, notice shall be posted at least twenty days prior to such election in at least two public places in each county in the community college area.

(4) If a special election is called, the board shall prescribe the form of the ballot to be used.

**Source:** Laws 1978, LB 922, § 3; Laws 1979, LB 363, § 3; R.S.1943, (1987), § 79-2650.03; Laws 1993, LB 239, § 40.

**85-1519 Capital construction project; bids; board; adopt plans and specifications.**

Each board shall adopt plans and specifications in advance of letting bids for any capital construction project. Such plans and specifications shall be the basis upon which the bids are received.

**Source:** Laws 1978, LB 922, § 8; R.S.1943, (1987), § 79-2650.06; Laws 1993, LB 239, § 41.

**85-1520 Facilities; construct, purchase, repair, and equip; revenue bonds; authorized.**

Each board may construct, purchase, or otherwise acquire, remodel, repair, furnish, and equip dormitories, residence halls, single-dwelling units, multiple-dwelling units, or other facilities for (1) the housing or boarding of single or married students, faculty, or other employees of the institution under its control, (2) buildings and structures for student and faculty unions or centers, and (3) the medical care and other activities of the students of such institutions, on real estate owned or controlled by such board or on real estate purchased, leased, or otherwise acquired for such purpose and pay the cost thereof, including the cost of such real estate, by issuing revenue bonds payable solely out of the revenue from such buildings or facilities. Any such buildings or

§ 85-1520 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

facilities shall be located on or adjacent to a campus or campuses controlled by such board.

**Source:** Laws 1987, LB 329, § 3; R.S.1943, (1987), § 79-2650.08; Laws 1993, LB 239, § 42.

**85-1521 Revenue bonds; pledge of revenue; payment; board; powers and duties; bonds not obligation of state.**

Each board may, by resolution or agreement, pledge all or any part of the revenue and fees derived from the operation of the dormitories, residence halls, single-dwelling units, multiple-dwelling units, buildings, and other facilities for housing, boarding, medical care, and other activities of students, faculty, or employees of the institution under its control erected or acquired or previously erected or acquired by any such board and contract as to the care, insurance, management, and operation of such buildings and facilities and the charges to be made and the rights of the holders of the revenue bonds. When any board contracts that the operation of any building or facility or part thereof shall be performed other than by the board itself, such board shall at all times maintain supervision of and control over the fees and charges imposed for the use of such building, facility, or part. In issuing revenue bonds and pledging revenue therefor, the board may pledge all or any part of the revenue and fees from buildings and facilities other than the building or facility to be constructed. Bonds issued under sections 85-1520 to 85-1527 shall not be an obligation of the State of Nebraska, and no tax shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall constitute limited obligations of the board issuing the same and shall be paid solely out of money derived from the revenue and earnings pledged as provided in sections 85-1501 to 85-1540.

**Source:** Laws 1987, LB 329, § 4; Laws 1988, LB 802, § 35; R.S.Supp.,1992, § 79-2650.09; Laws 1993, LB 239, § 43; Laws 1997, LB 269, § 73.

**85-1522 Revenue bonds; where payable.**

All revenue bonds issued pursuant to sections 85-1515 and 85-1520 to 85-1527 may be payable at the office of the State Treasurer, at such bank or trust company, either within or without the State of Nebraska, or at such other place as may be determined by the board.

**Source:** Laws 1987, LB 329, § 5; R.S.1943, (1987), § 79-2650.10; Laws 1993, LB 239, § 44; Laws 2001, LB 420, § 36.

**85-1523 Revenue bond proceeds; use; board; establish charges.**

The proceeds of revenue bonds provided for in section 85-1515, 85-1520, or 85-1521 shall be used solely for the purpose for which the bonds are issued and for the expenses of issuing such bonds. The board shall establish and maintain a schedule of rates, fees, or charges for the use of the facilities constructed or acquired by the issuance of revenue bonds and other facilities controlled by the board, the revenue of which, in whole or in part, is pledged to the holder of the bonds, which shall be in an amount at least sufficient, on the amortization plan, to pay the operating and maintenance charges of the facilities and the principal

and interest representing the indebtedness against the income and revenue therefrom.

**Source:** Laws 1987, LB 329, § 6; R.S.1943, (1987), § 79-2650.11; Laws 1993, LB 239, § 45.

**85-1524 Revenue refunding bonds; authorized.**

For the purpose of refunding any revenue bonds which may have been issued and are outstanding, the respective boards may issue revenue refunding bonds in the same manner as provided in sections 85-1520 to 85-1527 for the issuance of revenue bonds.

**Source:** Laws 1987, LB 329, § 7; R.S.1943, (1987), § 79-2650.12; Laws 1993, LB 239, § 46.

**85-1525 Board; furnish utilities.**

Each board may furnish heat, light, power, and other similar utilities to any facility or for any activities covered by sections 85-1515 and 85-1520 to 85-1527 without charging for the provision of such utilities against the revenue derived from such facility or activity.

**Source:** Laws 1987, LB 329, § 8; R.S.1943, (1987), § 79-2650.13; Laws 1993, LB 239, § 47.

**85-1526 Bonds; interest; exempt from taxation.**

In issuing revenue bonds pursuant to section 85-1515 or sections 85-1520 to 85-1527, the board issuing such bonds shall be a governmental subdivision and instrumentality of the State of Nebraska and all bonds issued under the authority of such sections, together with interest on such bonds, shall be wholly exempt from taxation.

**Source:** Laws 1987, LB 329, § 9; R.S.1943, (1987), § 79-2650.14; Laws 1993, LB 239, § 48.

**85-1527 Board; bonds; powers.**

Each board may do any and all things necessary and convenient to carry out the purposes and intent of sections 85-1515 and 85-1520 to 85-1527.

**Source:** Laws 1987, LB 329, § 10; R.S.1943, (1987), § 79-2650.15; Laws 1993, LB 239, § 49.

**85-1528 Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.**

The contracts of the teaching staff and school nurses employed by a board of a community college shall require the sanction of a majority of the members of the board. Except as provided in section 85-1534, each such contract shall be deemed renewed and in force and effect until a majority of the board votes, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The secretary of the board shall notify each teacher or school nurse in writing at least ninety days before the close of the contract period of any conditions of unsatisfactory performance or a reduction in teaching staff or nursing staff that the board considers may be just cause to either amend or terminate the contract for the ensuing year. Any teacher or school nurse so notified shall have the right to file within five days of receipt of

such notice a written request with the board for a hearing before the board. Upon receipt of such request, the board shall order the hearing to be held within ten days and shall give written notice of the time and place of the hearing to the teacher or school nurse. At the hearing, evidence shall be presented in support of the reasons given for considering amendment or termination of the contract, and the teacher or school nurse shall be permitted to produce evidence related thereto. The board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing.

**Source:** Laws 1993, LB 239, § 50.

A community college employee whose duties are primarily administrative and who does not hold a teaching certificate is not a teacher for purposes of this section, even if the employee occasionally teaches. *Apland v. Northeast Community College*, 8 Neb. App. 621, 599 N.W.2d 233 (1999).

Statutory requirements in this section concerning the timing of a hearing regarding proposed termination of an employee's

contract prevail over any contrary provisions in an educational institution's reduction in force policy. Nothing in this section suggests that the Legislature intended to include part-time employees in the statutory reduction in force provisions. *Ackerman v. Metropolitan Community College Area*, 6 Neb. App. 536, 575 N.W.2d 181 (1998).

**85-1529 Teachers and school nurses; additional contract rights; not affected.**

This section and section 85-1528 shall be construed as providing a minimum standard and not as repealing any rule, regulation, order, or other action of a board that provides for additional contract rights pertaining to the same subject matter.

**Source:** Laws 1993, LB 239, § 51.

**85-1530 Board; adopt reduction-in-force policy; contents.**

Each board shall adopt a reduction-in-force policy covering employees subject to such statutory provisions to carry out the intent of sections 85-1530 to 85-1533. No such policy shall allow the reduction of a permanent or tenured employee while a probationary employee is retained to render a service which such permanent employee is qualified by reason of certification and endorsement to perform or, if certification is not applicable, by reason of college credits in the teaching area. If employee evaluation is to be included as a criterion to be used for reduction in force, specific criteria, such as frequency of evaluation, evaluation forms, and number and length of classroom observations shall be included as part of the reduction-in-force policy.

**Source:** Laws 1993, LB 239, § 52.

This section does not apply to part-time employees. An educational institution does not need to literally attach evaluation forms to its reduction in force policy, so long as the policy sets

forth specific criteria to be used in conducting evaluations. *Ackerman v. Metropolitan Community College Area*, 6 Neb. App. 536, 575 N.W.2d 181 (1998).

**85-1531 Reduction in force; board and administration; duties.**

Before a reduction in force occurs, the board and administration shall present competent evidence demonstrating that a change in circumstances has occurred, necessitating a reduction in force. Any alleged change in circumstances shall be specifically related to the teacher or teachers to be reduced in force, and the board, based upon evidence produced at the hearing required by section 85-1528 shall be required to specifically find that there are no other vacancies on the staff for which the employee to be reduced is qualified by endorsement or professional training to perform.

**Source:** Laws 1993, LB 239, § 53.

**85-1532 Reduction in force; employee; contract terminated; effect; recall; rights.**

Any employee whose contract is terminated because of reduction in force shall be considered to have been dismissed with honor and shall upon request be provided a letter to that effect. Such employee shall have preferred rights to reemployment for a period of twenty-four months commencing at the end of the contract year of such employee, and the employee shall be recalled on the basis of length of service to the community college area to any position for which he or she is qualified by endorsement or college preparation to teach. The employee shall, upon reappointment, retain any benefits which had accrued to such employee prior to termination, but such leave of absence shall not be considered as a year of employment by the area. An employee under contract to another educational institution may waive recall, but such waiver shall not deprive the employee of his or her right to subsequent recall.

**Source:** Laws 1993, LB 239, § 54.

**85-1533 Reduction in force; noncompliance with federal or state law; how treated.**

Notwithstanding sections 85-1530 to 85-1532, if the reduction of an employee based upon the provisions of such sections would place a community college area in noncompliance of any federal or state law or regulations requiring affirmative action employment practices, the area may vary from the provisions of such sections as necessary to comply with such laws or regulations.

**Source:** Laws 1993, LB 239, § 55.

**85-1534 Contract; probationary period required.**

Any contract of employment entered into after September 9, 1993, between the teaching staff and a board which applies to the first two years of the employment of such teaching staff shall provide that the first two years of the employment of such teacher are a probationary period. Any such contract may be terminated during the probationary period without cause.

**Source:** Laws 1993, LB 239, § 56.

**85-1534.01 Leave of absence; effect.**

A person who has been hired to fulfill the duties of a teacher or school nurse who is on a leave of absence shall not accrue rights under sections 85-1528 to 85-1534 during the period that the person is fulfilling such duties.

**Source:** Laws 2005, LB 352, § 1.

**85-1535 Facilities for applied technology educational programs; contracts authorized; costs.**

A board of a community college area with a population of less than one hundred thousand according to the last federal decennial census and a campus located on a former military base may enter into contracts with any person, firm, or corporation providing for the implementation of any project for the constructing and improving of facilities to house applied technology educational programs necessary to carry out sections 85-1501 to 85-1540 and providing for the long-term payment of the cost of such project.

§ 85-1535 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

In no case shall any such contract run for a period longer than twenty years or shall the aggregate of existing contracts exceed four million five hundred thousand dollars for each area exclusive of administrative costs, credit enhancement costs, financing costs, capitalized interest, and reserves dedicated to secure payment of contracts.

No contract shall be entered into pursuant to this section without prior approval by a resolution of the board and the approval of the Coordinating Commission for Postsecondary Education.

The long-term payment of the cost of such project shall be paid from revenue to be raised pursuant to subdivision (2)(a) of section 85-1517. Any board entering into such contract for the construction and improvement of facilities from revenue to be raised pursuant to such subdivision shall make annual appropriations for amounts sufficient to pay annual obligations under such contract for the duration of such contract.

The board may also convey or lease and lease back all or any part of the project and the land on which such project is situated to such person, firm, or corporation as the board may contract with pursuant to this section to facilitate the long-term payment of the cost of such project. Any such conveyance or lease shall provide that when the cost of such project has been paid, together with interest and other costs thereon, such project and the land on which such project is located shall become the property of the community college area.

**Source:** Laws 1993, LB 239, § 57; Laws 1997, LB 269, § 74.

**85-1536 Transferred to section 85-2222.**

**85-1536.01 Repealed. Laws 2007, LB 342, § 46.**

**85-1537 Repealed. Laws 2007, LB 342, § 46.**

**85-1537.01 Repealed. Laws 2003, LB 540, § 13.**

**85-1538 Transferred to section 85-2229.**

**85-1539 Nebraska Community College Aid, Grant, and Contract Review Committee; created; duties.**

There is hereby created the Nebraska Community College Aid, Grant, and Contract Review Committee. The committee shall be selected by the Director of Administrative Services and shall consist of (1) a representative of the University of Nebraska who has expertise and experience in research and development, (2) a representative of the Department of Economic Development, (3) a representative of the Department of Labor, (4) a representative of the State Department of Education, and (5) a representative of the community colleges.

The committee shall develop guidelines and submit recommendations to the Director of Administrative Services for the distribution of the Nebraska Community College Aid Cash Fund and any other funds appropriated to Program 99 in Agency 83, Aid to Community Colleges, pursuant to any directives of the Governor or the Legislature. Recommendations made by the committee shall not exceed the amount appropriated to the fund.

**Source:** Laws 1989, LB 305, § 2; R.S.Supp.,1992, § 79-2663; Laws 1993, LB 239, § 61.

**85-1540 Nebraska Community College Aid Cash Fund; created; use; investment.**

There is hereby created the Nebraska Community College Aid Cash Fund. The fund shall be under the direction of the Nebraska Community College Aid, Grant, and Contract Review Committee. The Legislature may appropriate nongeneral funds and transfers pursuant to subdivision (1)(b)(iii) of section 48-621 to the fund. The fund shall be used to provide aid, grants, or contracts to the community colleges for the purposes of funding grants for applied technology and occupational faculty training, instructional equipment upgrades, employee assessment, preemployment training, employment training, and dislocated worker programs benefiting the State of Nebraska. Any money in the 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.

**Source:** Laws 1989, LB 305, § 1; Laws 1991, LB 663, § 52; R.S.Supp.,1992, § 79-2664; Laws 1993, LB 239, § 62; Laws 1994, LB 1066, § 140; Laws 1995, LB 1, § 16; Laws 2000, LB 953, § 12.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**85-1541 Activities pass; volunteer, defined.**

For purposes of section 85-1542, volunteer shall mean a person who is not an elected or appointed official or employee of a community college area who, at the request or with the permission of the board of governors of the community college area, engages in activities related to the purposes and functions of the community college area or for its general benefit.

**Source:** Laws 1994, LB 1310, § 14.

**85-1542 Activities pass; authorized; when.**

The board of governors of any community college area may authorize the issuance of a pass to any elected or appointed official, employee, retired employee, or volunteer of the community college area, member of a senior citizens group, or city official authorizing the admittance of the recipient of the pass and his or her spouse to recognized college activities without the need for the payment of any fee or charge. Such pass may be issued at no cost to the recipient or at such cost as may be designated by the board of governors.

**Source:** Laws 1994, LB 1310, § 13.

**ARTICLE 16****PRIVATE POSTSECONDARY CAREER SCHOOLS**

## Section

- 85-1601. Act, how cited.
- 85-1602. Act, purpose.
- 85-1603. Terms, defined.
- 85-1604. Education and schools; exempt from act.
- 85-1605. Department; administer act; personnel.
- 85-1606. Board; powers and duties; rules and regulations.
- 85-1607. Advisory council; members; appointment; term; duties.

## UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

- Section
- 85-1608. Private postsecondary career school; minimum standards.
- 85-1609. Accreditation; effect.
- 85-1610. Prohibited acts; enumerated.
- 85-1611. Private postsecondary career school; authority to operate; application; requirements.
- 85-1612. Commissioner; grant or deny authorization to operate.
- 85-1613. Authorization to operate; form; contents.
- 85-1614. Authorization to operate; nontransferable; change in ownership; new authorization.
- 85-1615. Authorization to operate; renewal; procedure; accreditation required; when.
- 85-1616. Inaugural authorization to operate; provisional authorization to operate; when applicable.
- 85-1617. Private postsecondary career school; accreditation; application.
- 85-1618. Department; accredit private postsecondary career school; when.
- 85-1619. Commissioner; certificate of accreditation; issuance; period valid; reaccreditation; application; list of schools.
- 85-1620. School; authority to award associate or baccalaureate degrees; commissioner; authorize.
- 85-1621. School; withdrawal of accreditation or authorization; when; hearing; notice.
- 85-1622. Agent's permit; application; procedure.
- 85-1623. Agent's permit; commissioner; grant or deny.
- 85-1624. Agent's permit; form; contents.
- 85-1625. Agent's permit; renewal; application.
- 85-1626. Authorization to operate; agent's permit; application; denial; reasons.
- 85-1627. Authorization to operate; agent's permit; application; denial; extension of time; when.
- 85-1628. Agent's permit; denial; notice; reasons.
- 85-1629. Commissioner decision; person aggrieved; right to hearing and review.
- 85-1630. Commissioner decision; aggrieved party; hearing and review; notify board.
- 85-1631. Aggrieved party; hearing; procedure.
- 85-1632. Hearing; decision; when final; judicial review.
- 85-1633. Authorization to operate; agent's permit; made conditional or revoked; cause; notice; hearing.
- 85-1634. Revocation hearing; how conducted; decision; when final; judicial review; notice; to whom given.
- 85-1635. Complaints of violations; filed; procedure.
- 85-1636. Complaint; when considered; notice; hearing.
- 85-1637. Complaint; hearing; violation; actions of board.
- 85-1638. Appeal; procedure.
- 85-1639. Bond or security agreement; filed; when; requirements.
- 85-1640. Agent's permit; application; surety bond; requirements.
- 85-1641. Surety bond or agreement; release of surety; effect.
- 85-1642. Authorization to operate or agent's permit; bond or agreement; when required.
- 85-1643. Private Postsecondary Career Schools Cash Fund; created; use; fees; schedule; no refund.
- 85-1644. Private postsecondary career school; discontinue operation; transcripts and records; preserved; permanent file maintained by department; fee.
- 85-1645. Contract or evidence of indebtedness; rights of parties; invalid agreements.
- 85-1646. Enforceability of contracts and evidence of indebtedness.
- 85-1647. Lending agency; evidence of indebtedness; marked, Student Loan; liability.
- 85-1648. Lending agency; subject to defenses and claims.
- 85-1649. Lending agency, defined.
- 85-1650. Violation; penalty.
- 85-1651. Private postsecondary career school; subject to jurisdiction of courts of this state.
- 85-1652. Attorney General or county attorney; enforce act.
- 85-1653. Commissioner; file for injunctive relief; when.
- 85-1654. Tuition Recovery Cash Fund; established; use; investment.

## Section

- 85-1655. Tuition Recovery Cash Fund; administration; advisory committee; members.
- 85-1656. Tuition Recovery Cash Fund; assessment; board; powers and duties.
- 85-1657. Tuition Recovery Cash Fund; claim; statute of limitations.
- 85-1658. Tuition Recovery Cash Fund; references in advertising or information authorized.

**85-1601 Act, how cited.**

Sections 85-1601 to 85-1658 shall be known and may be cited as the Private Postsecondary Career School Act.

**Source:** Laws 1977, LB 486, § 1; Laws 1990, LB 488, § 1; Laws 1993, LB 348, § 51; R.S.1943, (1994), § 79-2801; Laws 1995, LB 4, § 1.

**85-1602 Act, purpose.**

It is the purpose of the Private Postsecondary Career School Act to provide for the protection, education, and welfare of the citizens of the State of Nebraska, its private postsecondary career schools, and its students by:

- (1) Establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility in order to protect against substandard, transient, unethical, deceptive, or fraudulent schools and practices;
- (2) Prohibiting the granting of false educational credentials;
- (3) Prohibiting misleading literature, advertising, solicitation, or representation by schools or their agents;
- (4) Providing for the preservation of essential records; and
- (5) Providing certain rights and remedies to the consuming public and the board necessary to effectuate the purposes of the act.

**Source:** Laws 1977, LB 486, § 2; Laws 1990, LB 488, § 2; R.S.1943, (1994), § 79-2802; Laws 1995, LB 4, § 2.

**85-1603 Terms, defined.**

For purposes of the Private Postsecondary Career School Act:

- (1) Agent means any person who owns any interest in, is employed by, or regularly represents for remuneration a private postsecondary career school located within or outside this state who (a) by solicitation made in this state enrolls or seeks to enroll a resident of this state for education offered by such school, (b) offers to award educational credentials for remuneration on behalf of any such school, or (c) holds himself or herself out to residents of this state as representing such a school;
- (2) Agent's permit means a nontransferable, written authorization issued to a natural person by the department which allows that person to solicit or enroll any resident of this state for education in a private postsecondary career school;
- (3) Authorization to operate means approval by the department to operate a private postsecondary career school in this state;
- (4) Board means the State Board of Education;
- (5) Branch facility means a facility (a) which is separate from a principal facility, (b) which offers a full program and full student services, (c) which is

under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the principal facility, which principal facility is responsible for the delivery of all services, or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a private postsecondary career school pursuant to the act if the franchisor establishes the course curriculum and guidelines for teaching at the franchisee's facility;

(6) Commission means the Coordinating Commission for Postsecondary Education;

(7) Commissioner means the Commissioner of Education;

(8) Course of study or instruction means a program of study, training, or instruction consisting of a series of lessons or classes which are coordinated as a curriculum or program of instruction to prepare or qualify individuals or improve or upgrade the skills needed for employment, career opportunities, or any specific occupation;

(9) Department means the State Department of Education;

(10) Education or educational services means any class, course, or program of occupational training, instruction, or study;

(11) Entity means any individual, company, firm, society, group, association, partnership, limited liability company, corporation, trust, or other person;

(12) Grant, with respect to educational credentials, means award, sell, confer, bestow, or give;

(13) Home study school means a school which provides correspondence lesson materials prepared in a sequential and logical order for study and completion by a student on his or her own, with completed lessons returned by the student to the school for evaluation and subsequent return to the student, including those schools which offer instruction by home study in combination with in-residence training;

(14) Offer includes, in addition to its usual meaning, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform a described act;

(15) Out-of-state school means any school which has its place of instruction or its principal location outside the boundaries of this state and which offers or conducts courses of instruction or subjects on the premises of the school, or provides correspondence or home study lesson materials, or offers or provides Nebraska students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of Nebraska;

(16) Principal facility or main school means a private postsecondary career school located in the State of Nebraska;

(17) Private postsecondary career school means any organization or business enterprise which is not specifically exempt under section 85-1604, which offers courses or subjects for which tuition is charged, and at the place of business of which a course of instruction is available through classroom instruction, home study, or both to a person for the purpose of training, preparing, or improving the person for an occupation even though the organization's or business enterprise's principal efforts may not be exclusively educational in nature;

(18) Resident school means any school offering courses of instruction to its students on the school's premises;

(19) Separate classroom means a supplemental training space (a) which is located near the main school for the purpose of expanding the educational offerings or for training an overflow of students who cannot be accommodated at the main school, (b) which is close enough to the main school to assure immediate supervision and administration of all essential student services by the main school and ready access by students to the student services available, and (c) in which the only required onsite service is teaching; and

(20) Short-term training means classes, courses, or programs of instruction or study that are offered for the purpose of training, preparing, or improving a person for an occupation when (a) the total hours of instruction required for completion is sixteen clock hours or less and (b) no final course grade is given to persons enrolled.

**Source:** Laws 1977, LB 486, § 3; Laws 1982, LB 370, § 1; Laws 1990, LB 488, § 3; Laws 1993, LB 121, § 519; R.S.1943, (1994), § 79-2803; Laws 1995, LB 4, § 3; Laws 2003, LB 685, § 30.

#### **85-1604 Education and schools; exempt from act.**

The following education and schools are exempt from the Private Postsecondary Career School Act:

(1) Schools exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization which is offered solely for that organization's membership or offered without charge;

(3) Education provided by or funded by an employer and offered solely to its employees for the purpose of improving such persons in such employment;

(4) Education solely avocational or recreational in nature as determined by the department;

(5) Educational programs offered by a charitable institution, organization, or agency as long as such education or training is not advertised or promoted as leading toward occupational objectives;

(6) Public postsecondary schools established, operated, and governed by this state or its political subdivisions;

(7) Except as provided in subdivision (9) of this section, schools or organizations offering education or instruction which are licensed and regulated by agencies of this state other than the department as of September 2, 1977, except that such schools or organizations shall not be exempt from the act with respect to agents' permits and the Tuition Recovery Cash Fund;

(8) Schools or organizations which offer education or instruction and which are licensed and regulated solely by an agency of the federal government with respect to curriculum and qualifications of instructional staff;

(9) Not-for-profit private colleges, universities, and entities (a) which awarded baccalaureate or higher degrees prior to May 27, 2003, which maintain and operate educational programs for which credit is given, and which are in compliance with sections 85-1105 to 85-1111 or (b) which award baccalaureate or higher degrees, which maintain and operate educational programs for which credit is given, which are in compliance with sections 85-1105 to 85-1111, and which are regionally accredited;

§ 85-1604 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(10) For-profit colleges, universities, and entities which award baccalaureate or higher degrees, which are in compliance with sections 85-1105 to 85-1111, and which are regionally accredited;

(11) Institutions which have previously been regulated as private postsecondary career schools pursuant to the Private Postsecondary Career School Act, which have become regionally accredited, and which have been approved by the commission to offer baccalaureate degrees or higher pursuant to sections 85-1105 to 85-1111. Institutions which have previously been regulated as private postsecondary career schools and which have been approved by the commission to offer baccalaureate degrees pursuant to sections 85-1105 to 85-1111 but which have not become regionally accredited shall remain under the jurisdiction of the State Department of Education and subject to the Private Postsecondary Career School Act; and

(12) Entities exclusively offering short-term training.

**Source:** Laws 1977, LB 486, § 4; Laws 1980, LB 774, § 1; Laws 1982, LB 370, § 2; Laws 1990, LB 488, § 4; Laws 1993, LB 348, § 57; R.S.1943, (1994), § 79-2804; Laws 1995, LB 4, § 4; Laws 2003, LB 685, § 31.

**85-1605 Department; administer act; personnel.**

The department shall administer the Private Postsecondary Career School Act and for the purposes thereof shall employ such personnel as may be necessary. To effectuate the purposes of the act, the department may request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the department to exercise properly its powers and perform its duties under the act.

**Source:** Laws 1977, LB 486, § 5; Laws 1990, LB 488, § 5; R.S.1943, (1994), § 79-2805; Laws 1995, LB 4, § 5.

**85-1606 Board; powers and duties; rules and regulations.**

The board has the following powers and duties in the administration of the Private Postsecondary Career School Act:

(1) To establish minimum standards in conformity with section 85-1608, including quality of education, ethical and business practices, health and safety, and fiscal responsibility. Applicants for authorization to operate or for an agent's permit shall meet minimum standards before such authorization or permit may be issued or to continue such authorization or permit in effect. The standards to be developed under this subdivision shall be such as will effectuate the purposes of the act but will not unreasonably hinder legitimate educational innovation;

(2) To receive, investigate as it may deem necessary, and act upon applications for authorization to operate a private postsecondary career school and applications for an agent's permit;

(3) To maintain a list of private postsecondary career schools authorized to operate in this state and agents' permits which shall be available for the information of the public;

(4) To receive and cause to be maintained as a permanent file copies of records in conformity with section 85-1644;

(5) To establish fees for applications for authorization to operate, for agent's permits, and for accreditation. The fees shall be not more than the amount necessary to cover the cost of administration of the act; and

(6) To adopt and promulgate rules, regulations, and procedures necessary and appropriate for the conduct of its work and the implementation of the act.

**Source:** Laws 1977, LB 486, § 6; Laws 1990, LB 488, § 6; R.S.1943, (1994), § 79-2806; Laws 1995, LB 4, § 6; Laws 1999, LB 489, § 1.

**85-1607 Advisory council; members; appointment; term; duties.**

The board shall appoint an advisory council of six representatives of private postsecondary career schools. Members of the council shall include representatives from a business school, a trade or technical school, a better business bureau, and three other distinct areas of education. Members of the council shall serve staggered terms of three years each as established by the board at the time of initial appointment. If a vacancy occurs on the council, the board shall appoint a successor in the same category as the predecessor. The advisory council shall have the following responsibilities:

(1) To advise the department in its administration of the Private Postsecondary Career School Act; and

(2) To review the rules and regulations adopted or proposed for adoption by the department and make recommendations with respect thereto.

**Source:** Laws 1977, LB 486, § 7; Laws 1990, LB 488, § 7; R.S.1943, (1994), § 79-2807; Laws 1995, LB 4, § 7.

**85-1608 Private postsecondary career school; minimum standards.**

The board shall adopt and promulgate rules and regulations to establish minimum standards according to which a private postsecondary career school shall be maintained and operated in the state. A new school shall demonstrate that it can be maintained and operated in accordance with such standards. The standards shall include, but not be limited to, provisions on educational quality, facilities, equipment, qualification of administrators and instructors, publication of catalogs, credentials awarded, records, building and sanitation standards, financial stability, advertising, refund of unearned tuition and fees, and any other aspects deemed necessary by the board.

**Source:** Laws 1977, LB 486, § 8; Laws 1990, LB 488, § 8; R.S.1943, (1994), § 79-2808; Laws 1995, LB 4, § 8.

**85-1609 Accreditation; effect.**

Accreditation by national or regional accrediting agencies recognized by the United States Department of Education such as the Association of Independent Colleges and Schools, the Accrediting Council for Continuing Education and Training, the National Accrediting Association of Cosmetology Arts and Sciences, or the National Association of Trade and Technical Schools may be accepted by the department as evidence of compliance with the minimum standards established pursuant to sections 85-1606 and 85-1608. Accreditation by a recognized, specialized accrediting agency such as the Council on Medical Education of the American Medical Association, the Commission on Accreditation of the American Dental Association, or the American Veterinary Medical

§ 85-1609 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Association may be accepted as evidence of such compliance only as to the portion or program of a school accredited by such agency if the school as a whole is not accredited.

**Source:** Laws 1977, LB 486, § 10; Laws 1990, LB 488, § 9; R.S.1943, (1994), § 79-2810; Laws 1995, LB 4, § 9.

**85-1610 Prohibited acts; enumerated.**

No entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a private postsecondary career school not exempted from the Private Postsecondary Career School Act unless the school has a currently valid authorization to operate issued pursuant to section 85-1612;

(2) Offer, as or through an agent, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to section 85-1623, enrollment or instruction in or the granting of educational credentials from a private postsecondary career school not exempted from the act, whether such institution is within or outside this state, nor accept contracts or enrollment applications from any person who does not have a current agent's permit, but the board may adopt and promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(3) Instruct or educate, offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, or contract or offer to contract with any school or party to perform any such act in this state, whether such entity is located within or without this state, unless such entity observes and is in compliance with the minimum standards established pursuant to sections 85-1606 and 85-1608 and the rules and regulations adopted and promulgated by the department;

(4) Grant or offer to grant educational credentials without authorization to do so from the department; or

(5) Have a cohort default rate which triggers state liability pursuant to section 428(n) of the federal Higher Education Act of 1965, as amended, under section 85-9,139.02.

**Source:** Laws 1977, LB 486, § 11; Laws 1990, LB 488, § 10; R.S.1943, (1994), § 79-2811; Laws 1995, LB 4, § 10; Laws 1996, LB 29, § 3.

**85-1611 Private postsecondary career school; authority to operate; application; requirements.**

Each private postsecondary career school desiring authorization to operate in this state shall make application to the department upon forms to be provided by the department. The application shall be accompanied by descriptive literature published or proposed to be published by the school containing the information specified in the department's rules and regulations. The application shall include the identification of any branch facility or separate classroom. A facility which does not meet the criteria provided in subdivision (5) of section 85-1603 is not a branch facility and shall be considered a separate private postsecondary career school requiring separate authorization. A separate classroom shall not require separate authorization. The application shall also be accompanied by the application fee provided in section 85-1643. Until the Tuition Recovery Cash Fund initially reaches the minimum fund level pre-

scribed in section 85-1656, the application shall be accompanied by a surety bond as provided in section 85-1639.

**Source:** Laws 1977, LB 486, § 12; Laws 1982, LB 370, § 3; Laws 1990, LB 488, § 11; Laws 1993, LB 348, § 58; R.S.1943, (1994), § 79-2812; Laws 1995, LB 4, § 11.

**85-1612 Commissioner; grant or deny authorization to operate.**

Following review of an application for authorization to operate and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny authorization to operate. A grant of authorization to operate may be on such terms and conditions as the commissioner may specify.

**Source:** Laws 1977, LB 486, § 13; Laws 1990, LB 488, § 12; R.S.1943, (1994), § 79-2813; Laws 1995, LB 4, § 12.

**85-1613 Authorization to operate; form; contents.**

The authorization to operate shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term of the authorization;
- (2) The full, correct name and address of the school so authorized;
- (3) The authority for authorization and conditions thereof; and
- (4) Any limitation of authorization as deemed necessary by the commissioner.

The term for which authorization is given shall not extend for more than one fiscal year. For purposes of this section, fiscal year means the fiscal year established by the applicant school.

**Source:** Laws 1977, LB 486, § 14; Laws 1990, LB 488, § 13; R.S.1943, (1994), § 79-2814; Laws 1995, LB 4, § 13; Laws 1999, LB 489, § 2.

**85-1614 Authorization to operate; nontransferable; change in ownership; new authorization.**

The authorization to operate shall be issued to the owner or governing body of the applicant school and shall be nontransferable. In the event of a change in ownership of the school, the new owner or governing body shall, within ten days after the change of ownership, apply for a new authorization to operate, and in the event of failure to do so the authorization to operate shall terminate. An application for a new authorization to operate by reason of change in the ownership of the school shall be deemed an application for renewal of the school's authorization to operate.

**Source:** Laws 1977, LB 486, § 15; Laws 1990, LB 488, § 14; R.S.1943, (1994), § 79-2815; Laws 1995, LB 4, § 14.

**85-1615 Authorization to operate; renewal; procedure; accreditation required; when.**

Annual renewal of an authorization shall be required on a schedule established by the department. At least thirty days prior to the expiration of an

§ 85-1615 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

authorization to operate and upon notification by the department, the school shall complete and file with the department an application form for renewal of its authorization to operate. Financial stability information shall accompany the application. The renewal application shall be reviewed and acted upon as provided for an initial application. No authorization issued to any private postsecondary career school shall be renewed unless such school has been accredited by the department within five years of the date of its initial authorization to operate.

**Source:** Laws 1977, LB 486, § 16; Laws 1990, LB 488, § 15; R.S.1943, (1994), § 79-2816; Laws 1995, LB 4, § 15; Laws 1999, LB 489, § 3.

**85-1616 Inaugural authorization to operate; provisional authorization to operate; when applicable.**

A school not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization. The authorization shall be an inaugural authorization valid for one year and upon showing to the satisfaction of the commissioner that it has fully complied with sections 85-1611 to 85-1615, the school will be eligible for a regular authorization. The commissioner may issue provisional authorization to operate containing such limitations as to time, procedures, functions, or other conditions as the commissioner may deem necessary.

**Source:** Laws 1977, LB 486, § 17; Laws 1990, LB 488, § 16; R.S.1943, (1994), § 79-2817; Laws 1995, LB 4, § 16.

**85-1617 Private postsecondary career school; accreditation; application.**

Any private postsecondary career school offering instruction in the State of Nebraska shall, within five years of its initial authorization to operate, apply to the department for the accreditation of such school. No private postsecondary career school shall be accredited unless it submits to the department a written application for accreditation in accordance with the rules and regulations adopted and promulgated by the department pursuant to the Private Postsecondary Career School Act. Such application shall be accompanied by the fee provided in section 85-1643.

**Source:** Laws 1977, LB 486, § 18; Laws 1990, LB 488, § 17; R.S.1943, (1994), § 79-2818; Laws 1995, LB 4, § 17; Laws 1999, LB 489, § 4.

**85-1618 Department; accredit private postsecondary career school; when.**

The department may accredit a private postsecondary career school when the school has met the minimum standards specified in the rules and regulations of the department.

**Source:** Laws 1977, LB 486, § 19; Laws 1990, LB 488, § 18; R.S.1943, (1994), § 79-2819; Laws 1995, LB 4, § 18.

**85-1619 Commissioner; certificate of accreditation; issuance; period valid; reaccreditation; application; list of schools.**

The commissioner, upon determining that a private postsecondary career school has complied with all the requirements of the Private Postsecondary

Career School Act and the rules and regulations of the department, shall issue a certificate of accreditation to the school. Unless disapproved for failure to meet the requirements for accreditation on a continuing basis as provided for in the act and as defined by the rules and regulations, accreditation shall be valid for a period of five years following the effective date appearing on the certificate. The application for reaccreditation shall be accompanied by the applicable fee. The department shall maintain a list of the schools accredited under this section and make such lists available to the public upon request.

**Source:** Laws 1977, LB 486, § 20; Laws 1982, LB 370, § 4; Laws 1990, LB 488, § 19; R.S.1943, (1994), § 79-2820; Laws 1995, LB 4, § 19.

**85-1620 School; authority to award associate or baccalaureate degrees; commissioner; authorize.**

(1) A school which has been accredited pursuant to section 85-1619 may apply to the department for authority to award associate degrees. Upon determining that the quality of the courses of instruction at the applicant school meets the standards established in the department's rules and regulations, the commissioner may grant the applicant the authority to award an associate degree and shall issue a certificate setting forth the programs for which the associate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

(2) A school which has been accredited pursuant to section 85-1619 may apply to the department for authority to award baccalaureate degrees. The department shall refer such degree applications to the commission for its review and approval. Within ninety days after receipt of such referral, the commission shall make a determination setting forth the specific program area and the name of the baccalaureate degree program. The commission shall report its determination to the commissioner who shall issue a certificate setting forth the programs for which the baccalaureate degree may be awarded. Such authorization shall continue so long as the school remains accredited.

**Source:** Laws 1982, LB 370, § 5; Laws 1990, LB 488, § 20; R.S.1943, (1994), § 79-2820.01; Laws 1995, LB 4, § 20; Laws 2003, LB 685, § 32.

**85-1621 School; withdrawal of accreditation or authorization; when; hearing; notice.**

Any private postsecondary career school which has been accredited or authorized to award associate degrees and which ceases to meet any of the requirements for accreditation or the awarding of associate degrees shall be notified in writing of the specifics by certified mail and shall be afforded the opportunity for a hearing to show cause why the accreditation or the authorization should not be withdrawn. The board shall adopt and promulgate rules and regulations for the hearing and may utilize a hearing officer to conduct the hearing and to present recommendations, including findings of facts and conclusions of law, to the board for final decision. Following the hearing, if it is determined that the requirements have not been met, the board may withdraw

**§ 85-1621 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

the accreditation or authorization or may require action as a condition of continued accreditation or authorization.

**Source:** Laws 1977, LB 486, § 21; Laws 1982, LB 370, § 6; Laws 1990, LB 488, § 21; R.S.1943, (1994), § 79-2821; Laws 1995, LB 4, § 21.

**85-1622 Agent's permit; application; procedure.**

An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only private postsecondary career schools which meet the minimum standards established pursuant to sections 85-1606 and 85-1608. Each person desiring to perform the services of an agent in this state shall make application to the department upon forms to be provided by the department. The application shall state the school which the applicant intends to represent and shall include the applicant's social security number. An agent shall obtain a separate agent's permit for each school represented. A single agent's permit and surety bond for one school with one or more branch facilities shall extend to cover all branch facilities. The application for an agent's permit shall also be accompanied by evidence of a surety bond as provided in section 85-1640 and payment of the application fee provided in section 85-1643.

If any school which the applicant intends to represent is not domiciled in this state, the application shall be accompanied by the information required of schools making application for authorization to operate and evidence to show that its place of business outside this state has been licensed or approved for operation by the appropriate state agency in the state in which it is domiciled. If the state of domicile of the school has no authorization law for private postsecondary career schools or no such law applies to a particular school or course of study or instruction concerning which the applicant intends to act as an agent, the school shall (1) submit all information required of schools applying for authorization to operate in this state and show evidence that it has been accredited by an accrediting agency recognized by the United States Department of Education as specified in section 85-1609 and (2) file with the department a school bond in at least the amount required by section 85-1639.

**Source:** Laws 1977, LB 486, § 22; Laws 1982, LB 370, § 7; Laws 1990, LB 488, § 22; R.S.1943, (1994), § 79-2822; Laws 1995, LB 4, § 22; Laws 1997, LB 752, § 230; Laws 2003, LB 685, § 33.

**85-1623 Agent's permit; commissioner; grant or deny.**

Following review of an application for an agent's permit and any further information submitted by the applicant or required by the department and following such investigation of the applicant as the department may deem necessary or appropriate, the commissioner shall either grant or deny an agent's permit to the applicant.

**Source:** Laws 1977, LB 486, § 23; Laws 1990, LB 488, § 23; R.S.1943, (1994), § 79-2823; Laws 1995, LB 4, § 23.

**85-1624 Agent's permit; form; contents.**

The agent's permit shall be in a form approved by the department and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The school which such agent is authorized to represent.

The term for which an agent's permit is issued shall not extend for more than three calendar years.

**Source:** Laws 1977, LB 486, § 24; Laws 1990, LB 488, § 24; R.S.1943, (1994), § 79-2824; Laws 1995, LB 4, § 24; Laws 1999, LB 489, § 5.

#### **85-1625 Agent's permit; renewal; application.**

At least thirty days prior to the expiration of an agent's permit, the agent shall complete and file with the department an application form for renewal thereof. The application shall be reviewed and acted upon as provided for an initial application.

**Source:** Laws 1977, LB 486, § 25; Laws 1990, LB 488, § 25; R.S.1943, (1994), § 79-2825; Laws 1995, LB 4, § 25.

#### **85-1626 Authorization to operate; agent's permit; application; denial; reasons.**

Upon review and consideration of an application for authorization to operate or for an agent's permit, if the department determines that the applicant fails to meet the standards established in the Private Postsecondary Career School Act, the department shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

**Source:** Laws 1977, LB 486, § 26; Laws 1990, LB 488, § 26; R.S.1943, (1994), § 79-2826; Laws 1995, LB 4, § 26.

#### **85-1627 Authorization to operate; agent's permit; application; denial; extension of time; when.**

The commissioner may grant to an applicant for an authorization to operate or an agent's permit an extension of time of reasonable duration in which the applicant may eliminate the reasons for denial contained in the statement of denial if the applicant has demonstrated to the satisfaction of the commissioner the desire to meet the standards established pursuant to sections 85-1606 and 85-1608 and if, in the judgment of the commissioner, it would be reasonably possible for the applicant to meet such requirements and standards within such time.

**Source:** Laws 1977, LB 486, § 27; Laws 1990, LB 488, § 27; R.S.1943, (1994), § 79-2827; Laws 1995, LB 4, § 27.

#### **85-1628 Agent's permit; denial; notice; reasons.**

If the commissioner denies an application for an agent's permit, he or she shall notify the school which the agent represented or proposed to represent, according to the records of the department, including the reasons for denial.

**Source:** Laws 1977, LB 486, § 28; Laws 1990, LB 488, § 28; R.S.1943, (1994), § 79-2828; Laws 1995, LB 4, § 28.

**85-1629 Commissioner decision; person aggrieved; right to hearing and review.**

Any person aggrieved by a decision of the commissioner respecting denial of an authorization to operate or of an agent's permit or the placing of conditions on either shall have the right to a hearing and review of such decision by the board as provided in sections 85-1630 to 85-1632.

**Source:** Laws 1977, LB 486, § 29; Laws 1990, LB 488, § 29; R.S.1943, (1994), § 79-2829; Laws 1995, LB 4, § 29.

**85-1630 Commissioner decision; aggrieved party; hearing and review; notify board.**

If, upon written notification of any such action taken by the commissioner, the aggrieved party desires a hearing and review, such party shall so notify the board in writing within ten business days after the giving of notice of such action. If such notice is not given, the action shall be deemed final. Upon receipt of such notice from the aggrieved party, the board shall fix the time and place for a hearing and shall notify the aggrieved party by certified mail.

**Source:** Laws 1977, LB 486, § 30; Laws 1990, LB 488, § 30; R.S.1943, (1994), § 79-2830; Laws 1995, LB 4, § 30.

**85-1631 Aggrieved party; hearing; procedure.**

At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition to the commissioner's action or in extenuation or mitigation. The hearing shall be conducted in accordance with the Administrative Procedure Act. Any member of the board may preside except when a clear conflict of interest may be demonstrated. The board shall adopt and promulgate rules and regulations for such hearings and may utilize hearing officers to conduct the hearings and to present recommendations, including findings of fact and conclusions of law, to the board for final decision.

**Source:** Laws 1977, LB 486, § 31; Laws 1990, LB 488, § 31; R.S.1943, (1994), § 79-2831; Laws 1995, LB 4, § 31.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**85-1632 Hearing; decision; when final; judicial review.**

A decision of the board following a hearing shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. All matters presented at any such hearing shall be acted upon promptly by the board, and the board shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing, and the appropriate rule, order, sanction, relief, or denial thereof.

**Source:** Laws 1977, LB 486, § 32; Laws 1990, LB 488, § 32; R.S.1943, (1994), § 79-2832; Laws 1995, LB 4, § 32.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**85-1633 Authorization to operate; agent's permit; made conditional or revoked; cause; notice; hearing.**

An authorization to operate or an agent's permit may be revoked or made conditional after its issuance if the board has reasonable cause to believe that the holder thereof has violated or is violating the Private Postsecondary Career School Act or any rules and regulations adopted and promulgated under the act. Prior to such revocation or imposition of condition, the board shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder that if a hearing is requested in writing within ten business days of receipt of the notice, the board shall set a time and place for a hearing at which the holder may be heard in response to the allegation of noncompliance.

**Source:** Laws 1977, LB 486, § 33; Laws 1990, LB 488, § 33; R.S.1943, (1994), § 79-2833; Laws 1995, LB 4, § 33.

**85-1634 Revocation hearing; how conducted; decision; when final; judicial review; notice; to whom given.**

If a hearing is requested pursuant to section 85-1633, it shall be conducted as provided in sections 85-1630 and 85-1631. The decision of the board shall be made as provided in section 85-1632 and shall be deemed final subject to the right of judicial review provided in the Administrative Procedure Act. If an agent's permit is revoked or conditions imposed thereon, the board shall notify the school which the agent was permitted to represent, as shown in the records of the department, in addition to the notice required to be given to the agent and any other parties to the hearing.

**Source:** Laws 1977, LB 486, § 34; Laws 1990, LB 488, § 34; R.S.1943, (1994), § 79-2834; Laws 1995, LB 4, § 34.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**85-1635 Complaints of violations; filed; procedure.**

Any person claiming damage or loss as a result of any act or practice by a private postsecondary career school or its agent, or both, which is a violation of the Private Postsecondary Career School Act or of the rules and regulations adopted and promulgated under the act may file with the board a verified complaint against such school or against its agent or both. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the board. A complaint may also be filed with the board by the commissioner or the Attorney General.

**Source:** Laws 1977, LB 486, § 35; Laws 1990, LB 488, § 35; R.S.1943, (1994), § 79-2835; Laws 1995, LB 4, § 35.

**85-1636 Complaint; when considered; notice; hearing.**

The board may consider a complaint after ten days' written notice by certified mail, return receipt requested, to such school or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon.

§ 85-1636 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Such hearing shall be conducted in accordance with the Administrative Procedure Act.

**Source:** Laws 1977, LB 486, § 36; Laws 1990, LB 488, § 36; R.S.1943, (1994), § 79-2836; Laws 1995, LB 4, § 36.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**85-1637 Complaint; hearing; violation; actions of board.**

If, upon all the evidence at the hearing, the board finds that a private postsecondary career school or its agent, or both, has engaged in or is engaging in any act or practice which violates the Private Postsecondary Career School Act or the rules and regulations adopted and promulgated under the act, the board shall issue and cause to be served upon such school or agent, or both, an order requiring such school or agent, or both, to cease and desist from such act or practice. The board may also, as appropriate, based on its own investigation or the evidence adduced at such hearing, or both, commence an action to revoke a school's authorization to operate or an agent's permit.

**Source:** Laws 1977, LB 486, § 37; Laws 1990, LB 488, § 37; R.S.1943, (1994), § 79-2837; Laws 1995, LB 4, § 37.

**85-1638 Appeal; procedure.**

Any person aggrieved or adversely affected by any final board action or by any penalty imposed by the board may appeal such action or penalty, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1977, LB 486, § 38; Laws 1988, LB 352, § 164; R.S.1943, (1994), § 79-2838; Laws 1995, LB 4, § 38.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**85-1639 Bond or security agreement; filed; when; requirements.**

Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, when an application is made for authorization to operate, the department may require the private postsecondary career school making such application to file with the department a good and sufficient surety bond in the penal sum of twenty thousand dollars or other security agreement deemed satisfactory by the department. Such bond or other security shall cover branch facilities. The bond or agreement shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond or agreement shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the school and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon shall in no event exceed the

penal sum of the bond or agreement. The bond or agreement may be continuous.

**Source:** Laws 1977, LB 486, § 42; Laws 1982, LB 370, § 8; Laws 1990, LB 488, § 38; Laws 1993, LB 348, § 59; R.S.1943, (1994), § 79-2842; Laws 1995, LB 4, § 39.

**85-1640 Agent's permit; application; surety bond; requirements.**

The application for an agent's permit shall be accompanied by a good and sufficient surety bond in a penal sum of five thousand dollars. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a private postsecondary career school, but it shall cover each agent for the school in a penal sum of five thousand dollars. Bonds in blanket form shall be executed by the school as principal. The bond shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage as a result of any act or practice which is a violation of the Private Postsecondary Career School Act by the agent and that the surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond may be continuous.

**Source:** Laws 1977, LB 486, § 43; Laws 1990, LB 488, § 39; R.S.1943, (1994), § 79-2843; Laws 1995, LB 4, § 40; Laws 2003, LB 685, § 34.

**85-1641 Surety bond or agreement; release of surety; effect.**

(1) Until the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the surety bond or other security agreement of a school provided for in section 85-1639 shall cover the period of the authorization to operate except when a surety is released as provided in this section. The surety bond of an agent provided for in section 85-1640 shall cover the period of such agent's permit except when a surety is released as provided in this section.

(2) A surety on any bond or agreement filed under section 85-1639 or 85-1640 may be released after such surety serves written notice on the department thirty days prior to the release. Such release shall not discharge or otherwise affect any claim previously or subsequently filed by a student or enrollee or his or her parent or guardian for loss or damage resulting from any act or practice which is a violation of the Private Postsecondary Career School Act alleged to have occurred while the bond or agreement was in effect or for a school's ceasing operations during the term for which tuition has been paid while the bond or agreement was in force.

**Source:** Laws 1977, LB 486, § 44; Laws 1990, LB 488, § 40; Laws 1993, LB 348, § 60; R.S.1943, (1994), § 79-2844; Laws 1995, LB 4, § 41; Laws 2001, LB 797, § 51.

**85-1642 Authorization to operate or agent's permit; bond or agreement; when required.**

§ 85-1642 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Except as otherwise provided in this section, authorization to operate and an agent's permit shall be suspended by operation of law when the school or agent is no longer covered by a surety bond or agreement as required by sections 85-1639 and 85-1640. The commissioner shall cause the school or agent, or both, to receive at least thirty days' written notice prior to the release of the surety to the effect that the authorization or permit shall be suspended by operation of law until another surety bond or agreement is filed in the same manner and like amount as the bond or agreement being terminated. After the Tuition Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-1656, the surety bond or agreement provided for in section 85-1639 shall no longer be required to be kept in force by any private postsecondary career school contributing to the fund except as specified for any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993.

**Source:** Laws 1977, LB 486, § 45; Laws 1990, LB 488, § 41; R.S.1943, (1994), § 79-2845; Laws 1995, LB 4, § 42; Laws 2001, LB 797, § 52.

**85-1643 Private Postsecondary Career Schools Cash Fund; created; use; fees; schedule; no refund.**

(1) The Private Postsecondary Career Schools Cash Fund is created. All fees collected pursuant to the Private Postsecondary Career School Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used only for the purpose of administering the act. No fees shall be subject to refund.

(2) Except as provided in subsection (4) of this section, fees collected pursuant to the act shall be the following:

(a) Initial application for authorization to operate, two hundred dollars plus twenty dollars per program of study offered;

(b) Renewal application for authorization to operate, one hundred dollars plus twenty dollars per program of study offered;

(c) Approval to operate a branch facility, one hundred dollars;

(d) Late submission of application, fifty dollars;

(e) Initial agent's permit, fifty dollars;

(f) Agent's permit renewal, twenty dollars;

(g) Accreditation or reaccreditation, one hundred dollars;

(h) Initial authorization to award an associate degree, one hundred dollars;

(i) Initial authorization to offer a baccalaureate degree, two hundred dollars;

(j) Significant program change, fifty dollars;

(k) Change of name or location, twenty-five dollars; and

(l) Additional new program, one hundred dollars.

(3) Fees for out-of-state schools may include, but shall not exceed the following:

(a) Certificate of approval to recruit, five hundred dollars annually;

(b) Initial agent's permit, one hundred dollars; and

(c) Agent's permit renewal, forty dollars.

(4)(a) The board shall consult with the advisory council established pursuant to section 85-1607 regarding any increase in fees under the act. The board may increase fees by not more than twenty percent for each year of fiscal years 2003-04, 2004-05, and 2005-06. Beginning with fiscal year 2006-07 and each year thereafter, the board in consultation with the advisory council shall establish fees sufficient to cover the total cost of administration, except that such fees shall not exceed one hundred ten percent of the previous year's total cost. Such fees shall be set out in the rules and regulations adopted and promulgated by the board.

(b) Total cost shall be determined by an annual audit of:

(i) Salaries and benefits or portions thereof for those department employees who administer the act;

(ii) Operating costs such as rent, utilities, and supplies;

(iii) Capital costs such as office equipment, computer hardware, and computer software;

(iv) Costs for travel by employees of the department, including car rental, gas, and mileage charges; and

(v) Other reasonable and necessary costs as determined by the board.

**Source:** Laws 1977, LB 486, § 46; Laws 1982, LB 928, § 72; Laws 1982, LB 370, § 9; Laws 1990, LB 488, § 42; R.S.1943, (1994), § 79-2846; Laws 1995, LB 4, § 43; Laws 1999, LB 489, § 6; Laws 2003, LB 685, § 35.

**85-1644 Private postsecondary career school; discontinue operation; transcripts and records; preserved; permanent file maintained by department; fee.**

If any private postsecondary career school now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer of such school shall cause to be filed with the department the original or legible true copies of all academic and financial aid transcripts and such other records of the school as may be specified by the department. If there is a change of ownership, the records shall be transferred intact and in good condition to the new owner and the transfer shall be verified by the department. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession. A student requesting a copy of his or her transcripts which are on file may be charged a fee of ten dollars for each copy requested.

**Source:** Laws 1977, LB 486, § 48; Laws 1990, LB 488, § 43; R.S.1943, (1994), § 79-2848; Laws 1995, LB 4, § 44; Laws 1999, LB 489, § 7.

**85-1645 Contract or evidence of indebtedness; rights of parties; invalid agreements.**

If the person to whom educational services are to be rendered or furnished by a private postsecondary career school is a resident of this state at the time any contract relating to payment for such services, any note, instrument, or other evidence of indebtedness relating to payment for such services, or any note, instrument, or other evidence of indebtedness relating thereto is entered into, sections 85-1645 to 85-1649 shall govern the rights of the parties to such contract or evidence of indebtedness. The following agreements entered into in

§ 85-1645 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

connection with the contract or the giving of such evidence of indebtedness shall be invalid:

- (1) That the law of another state shall apply;
- (2) That the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (3) That another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (4) That fixes venue.

**Source:** Laws 1977, LB 486, § 49; Laws 1990, LB 488, § 44; R.S.1943, (1994), § 79-2849; Laws 1995, LB 4, § 45.

**85-1646 Enforceability of contracts and evidence of indebtedness.**

No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by (1) any private postsecondary career school operating in this state unless the school has received authorization to operate or (2) any private postsecondary career school having an agent or agents in this state unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered or to whom educational credentials were to be granted had an agent's permit at the time of their contract with such person.

**Source:** Laws 1977, LB 486, § 50; Laws 1990, LB 488, § 45; R.S.1943, (1994), § 79-2850; Laws 1995, LB 4, § 46.

**85-1647 Lending agency; evidence of indebtedness; marked, Student Loan; liability.**

Any lending agency extending credit or lending money to any person for tuition, fees, or charges whatever of a private postsecondary career school for educational or other services or facilities to be rendered or furnished by the school shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked, on the face thereof, Student Loan. If such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

**Source:** Laws 1977, LB 486, § 51; Laws 1990, LB 488, § 46; R.S.1943, (1994), § 79-2851; Laws 1995, LB 4, § 47.

**85-1648 Lending agency; subject to defenses and claims.**

Notwithstanding the presence or absence of the notation required by section 85-1647 and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the private postsecondary career school which was to render or furnish such services or facilities by any party to the evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished up to the amount remaining to be paid thereon.

**Source:** Laws 1977, LB 486, § 52; Laws 1990, LB 488, § 47; R.S.1943, (1994), § 79-2852; Laws 1995, LB 4, § 48.

**85-1649 Lending agency, defined.**

For purposes of sections 85-1647 and 85-1648, lending agency shall mean (1) any private postsecondary career school or (2) any entity (a) controlling, controlled by, or held in common ownership with such a school or (b) regularly lending money to such a school or to students of such a school.

**Source:** Laws 1977, LB 486, § 53; Laws 1990, LB 488, § 48; R.S.1943, (1994), § 79-2853; Laws 1995, LB 4, § 49.

**85-1650 Violation; penalty.**

Any entity or any owner, officer, agent, or employee thereof who willfully violates section 85-1610 or willfully fails or refuses to deposit with the department the records required by section 85-1644 shall be guilty of a Class II misdemeanor. Each day's failure to comply with such sections shall be a separate violation.

**Source:** Laws 1977, LB 486, § 55; Laws 1990, LB 488, § 49; R.S.1943, (1994), § 79-2855; Laws 1995, LB 4, § 50.

**85-1651 Private postsecondary career school; subject to jurisdiction of courts of this state.**

Any private postsecondary career school not exempt under section 85-1604, whether or not a resident of or having a place of business in this state, which instructs or educates or offers to contract to provide instructional or educational services in this state to a resident of this state, whether such instruction or services are provided in person or by correspondence, or which offers to award or awards any educational credentials to a resident of this state, thereby submits such school and, if a natural person, his or her personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of the Private Postsecondary Career School Act by injunction pursuant to sections 85-1652 and 85-1653.

**Source:** Laws 1977, LB 486, § 56; Laws 1983, LB 447, § 93; Laws 1990, LB 488, § 50; R.S.1943, (1994), § 79-2856; Laws 1995, LB 4, § 51.

**85-1652 Attorney General or county attorney; enforce act.**

The Attorney General or the county attorney of any county in which a private postsecondary career school or an agent thereof is found, at the request of the board or on his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the Private Postsecondary Career School Act.

**Source:** Laws 1977, LB 486, § 57; Laws 1990, LB 488, § 51; R.S.1943, (1994), § 79-2857; Laws 1995, LB 4, § 52.

**85-1653 Commissioner; file for injunctive relief; when.**

Whenever it appears to the commissioner that any entity is or has been violating any of the provisions of the Private Postsecondary Career School Act or any of the lawful rules, regulations, or orders of the board or department, the commissioner may file a petition for injunction in the name of the department in any court of competent jurisdiction in this state against such entity for

the purpose of enjoining such violation or for an order directing compliance with the provisions of the act and the rules, regulations, and orders. It shall not be necessary that the commissioner allege or prove that there is no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the department may have and shall be in addition to any right of criminal prosecution provided by law. The commissioner shall not obtain a temporary restraining order without notice to the entity affected. The pendency of board action with respect to alleged violations shall not operate as a bar to an action for injunctive relief pursuant to this section.

**Source:** Laws 1977, LB 486, § 58; Laws 1990, LB 488, § 52; R.S.1943, (1994), § 79-2858; Laws 1995, LB 4, § 53.

**85-1654 Tuition Recovery Cash Fund; established; use; investment.**

The Tuition Recovery Cash Fund is hereby established. The fund shall be a cash fund used to receive assessments imposed under section 85-1656 and to pay claims authorized under section 85-1657. Any money in the 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. Any interest earned by the fund shall accrue to the fund.

**Source:** Laws 1993, LB 348, § 52; Laws 1994, LB 1066, § 92; R.S.1943, (1994), § 79-2859; Laws 1995, LB 4, § 54.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**85-1655 Tuition Recovery Cash Fund; administration; advisory committee; members.**

The Tuition Recovery Cash Fund shall be administered by the board and an advisory committee composed of the commissioner or his or her representative, the State Treasurer or his or her representative, and three administrators of private postsecondary career schools appointed by the board with the advice of the Nebraska Council of Private Postsecondary Career Schools. The board shall adopt and promulgate rules and regulations for the administration of the fund and for the evaluation and approval of claims pursuant to section 85-1657.

**Source:** Laws 1993, LB 348, § 53; R.S.1943, (1994), § 79-2860; Laws 1995, LB 4, § 55.

**85-1656 Tuition Recovery Cash Fund; assessment; board; powers and duties.**

(1) The board shall annually assess each private postsecondary career school one-tenth of one percent of the prior school year's gross tuition revenue until the Tuition Recovery Cash Fund reaches the minimum fund level. The fund shall be maintained at a minimum of one hundred fifty thousand dollars and a maximum of three hundred thousand dollars. At any time when the fund drops below the minimum level, the board may resume the assessment. Funds in excess of the maximum level shall be used as directed by the board to provide grants or scholarships for students attending private postsecondary career schools.

(2) The board shall require documentation from each private postsecondary career school to verify the tuition revenue collected by the school and to determine the amount of the assessment under this section.

(3) Any private postsecondary career school applying for authorization to operate from the commissioner or any other agency after September 9, 1993, shall not be assessed under this section for the first year of operation but shall be assessed each year thereafter for four years or until the fund reaches the minimum level required by this section, whichever occurs last, and shall maintain the surety bond or other security required by section 85-1639 until such time.

(4) The authorization to operate of any private postsecondary career school which fails to comply with this section shall be subject to revocation.

**Source:** Laws 1993, LB 348, § 54; R.S.1943, (1994), § 79-2861; Laws 1995, LB 4, § 56.

**85-1657 Tuition Recovery Cash Fund; claim; statute of limitations.**

(1) Any student injured by the termination of operations by a private postsecondary career school on or after September 9, 1993, may submit a claim against the Tuition Recovery Cash Fund. The board shall adopt rules and regulations for the evaluation and approval of claims made against the fund and shall provide for payments made from the fund. No claim shall be allowed unless it is submitted within one year after the school terminates operations and there are sufficient funds available in the fund to pay the claim.

(2) For purposes of this section, a student injured by the termination of operations by a private postsecondary career school means (a) a student who has paid tuition and fees to the school for which classes were not offered and no refunds were made or (b) a student who ceased to be enrolled in classes at a school while the school was in operation and to whom a refund of unearned tuition and fees became due from the school after the school terminated operations and no refunds were made within the required time period following the student's withdrawal from the school under the rules and regulations established by the department.

**Source:** Laws 1993, LB 348, § 55; R.S.1943, (1994), § 79-2862; Laws 1995, LB 4, § 57; Laws 2001, LB 797, § 53.

**85-1658 Tuition Recovery Cash Fund; references in advertising or information authorized.**

A private postsecondary career school may include references to the Tuition Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference shall clearly describe the protection and limitations prescribed in section 85-1657 and the rules and regulations.

**Source:** Laws 1993, LB 348, § 56; R.S.1943, (1994), § 79-2863; Laws 1995, LB 4, § 58.

**ARTICLE 17**

**NEBRASKA EDUCATIONAL FINANCE AUTHORITY**

Section

85-1701. Act, how cited.

85-1702. Legislative findings.

## UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

- Section
- 85-1703. Definitions, where found.
  - 85-1704. Authority, defined.
  - 85-1705. Bonds, defined.
  - 85-1706. Cost, defined.
  - 85-1707. Private institution of higher education, defined.
  - 85-1708. Project, defined.
  - 85-1709. Property, defined.
  - 85-1710. Nebraska Educational Finance Authority; created.
  - 85-1711. Authority; members; qualifications; appointment; terms; removal.
  - 85-1712. Authority; officers; executive director; compensation; receive contributions.
  - 85-1713. Authority; keep records and accounts; seal; certified copies.
  - 85-1714. Authority; quorum; actions; vacancy; effect.
  - 85-1715. Authority; officers, members, and employees; surety bond requirements.
  - 85-1716. Authority; members; expenses.
  - 85-1717. Authority member or employee; conflict of interest; abstention.
  - 85-1718. Authority; purpose.
  - 85-1719. Authority; perpetual succession; bylaws.
  - 85-1720. Authority; adopt seal.
  - 85-1721. Authority; office; location.
  - 85-1722. Authority; sue and be sued.
  - 85-1723. Authority; powers over project.
  - 85-1724. Authority; issuance of bonds authorized.
  - 85-1725. Authority; charge for services.
  - 85-1726. Authority; rules and regulations for use of project; designate agent.
  - 85-1727. Authority; personnel.
  - 85-1728. Authority; receive loans, grants, and contributions.
  - 85-1729. Authority; mortgage of certain property.
  - 85-1730. Authority; loans authorized; limitation.
  - 85-1731. Authority; make loans; issue bonds; conditions.
  - 85-1732. Authority; administrative costs; apportionment.
  - 85-1733. Authority; general powers; joint projects.
  - 85-1734. Authority; combine and substitute projects; bonds; additional series.
  - 85-1735. Expenses; how paid; liability; limitation.
  - 85-1736. Authority; acquisition of property.
  - 85-1737. Authority; financing obligations completed; convey title to private institution.
  - 85-1738. Authority; bonds; issuance; form; proceeds; how used; replacement; liability.
  - 85-1739. Bond issuance; resolution; provisions enumerated.
  - 85-1740. Bonds; secured by trust agreement; contents; expenses; how treated.
  - 85-1741. Bonds issued to purchase securities of private institution; provisions applicable.
  - 85-1742. Bonds issued to acquire federally guaranteed securities; provisions applicable.
  - 85-1743. Refunding bonds; issuance authorized; provisions applicable.
  - 85-1744. Bond issuance; state or political subdivision; no obligation; statement; expenses.
  - 85-1745. Authority; charge rents; lease facilities.
  - 85-1746. Money received by authority; deemed trust funds; investment.
  - 85-1747. Bondholders and trustee; enforcement of rights.
  - 85-1748. Act, how construed.
  - 85-1749. Authority; journal; public records.
  - 85-1750. Authority; public purpose; exemptions from taxation.
  - 85-1751. Bondholders; pledge; agreement of the state.
  - 85-1752. Act; supplemental to other laws.
  - 85-1753. Act; provisions controlling.
  - 85-1754. Nebraska Health Education Assistance Loan Program; established.
  - 85-1755. Nebraska Health Education Assistance Loan Program; authority; powers.
  - 85-1756. Nebraska Health Education Assistance Loan Program; loans; how funded.
  - 85-1757. Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.

## Section

- 85-1758. Nebraska Health Education Assistance Loan Program; bonds; security.  
85-1759. Nebraska Health Education Loan Repayment Fund; created; use.  
85-1760. Nebraska Student Loan Assistance Program; established.  
85-1761. Nebraska Student Loan Assistance Program; authority; powers.  
85-1762. Nebraska Student Loan Assistance Program; loans; how funded.  
85-1763. Change in name; effect.

**85-1701 Act, how cited.**

Sections 85-1701 to 85-1763 shall be known and may be cited as the Nebraska Educational Finance Authority Act.

**Source:** Laws 1981, LB 321, § 2; Laws 1993, LB 465, § 2; R.S.1943, (1994), § 79-2902; Laws 1995, LB 5, § 2.

**85-1702 Legislative findings.**

The Legislature finds and declares that:

(1) For the benefit of the people of the State of Nebraska, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills;

(2) To achieve these ends it is of the utmost importance that private institutions of higher education within the state be provided with appropriate additional means of assisting such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills;

(3) It is the purpose of the Nebraska Educational Finance Authority Act to provide a measure of assistance and an alternative method of enabling private institutions of higher education in the state to finance the acquisition, construction, and renovation of needed educational facilities and structures and to refund, refinance, or reimburse outstanding indebtedness incurred by them or advances made by them, including advances from an endowment or any other similar fund, for the construction, acquisition, or renovation of needed educational facilities and structures, whether or not constructed, acquired, or renovated prior to August 30, 1981;

(4) The financing and refinancing of educational facilities, through means other than the appropriation of public funds to private institutions of higher education, as described in the act, is a valid public purpose;

(5) The availability of improved access to health profession schools will benefit the people of the State of Nebraska and improve their health, welfare, and living conditions;

(6) The establishment of a health education loan program, with the proceeds of bonds to be used for the purchase or making of loans to students or certain former students of health profession schools, will improve the access to such schools and assist such persons in meeting the expenses incurred in availing themselves of health education opportunities; and

(7) The establishment of a program to assist private institutions of higher education to provide loans to their full-time students pursuing an academic

§ 85-1702 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

degree will improve access to higher education and contribute to the health, welfare, and living conditions in Nebraska.

**Source:** Laws 1981, LB 321, § 1; Laws 1983, LB 159, § 1; Laws 1993, LB 465, § 1; R.S.1943, (1994), § 79-2901; Laws 1995, LB 5, § 1.

**85-1703 Definitions, where found.**

For purposes of the Nebraska Educational Finance Authority Act, unless the context otherwise requires, the definitions found in sections 85-1704 to 85-1709 shall apply.

**Source:** Laws 1981, LB 321, § 3; Laws 1983, LB 159, § 14; Laws 1993, LB 465, § 3; R.S.1943, (1994), § 79-2903; Laws 1995, LB 5, § 3.

**85-1704 Authority, defined.**

Authority shall mean the Nebraska Educational Finance Authority created by the Nebraska Educational Finance Authority Act or any board, body, commission, department, or office succeeding to the principal functions thereof or to whom the powers conferred upon such authority by the act are given by law.

**Source:** Laws 1981, LB 321, § 4; Laws 1993, LB 465, § 4; R.S.1943, (1994), § 79-2904; Laws 1995, LB 5, § 4.

**85-1705 Bonds, defined.**

Bonds shall mean bonds, notes, or other obligations of the authority issued under the Nebraska Educational Finance Authority Act, including refunding bonds, notwithstanding that the same may be secured by the full faith and credit of a private institution of higher education or any other lawfully pledged security of a private institution of higher education.

**Source:** Laws 1981, LB 321, § 8; Laws 1993, LB 465, § 6; R.S.1943, (1994), § 79-2908; Laws 1995, LB 5, § 5.

**85-1706 Cost, defined.**

Cost as applied to a project or any portion thereof financed under the Nebraska Educational Finance Authority Act shall mean all or any part of the cost of construction and acquisition of all land, buildings, or structures including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of such construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, expenses necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the construction and acquisition of the project, the financing of such construction and acquisition, and the placing of the project in operation.

**Source:** Laws 1981, LB 321, § 7; Laws 1993, LB 465, § 5; R.S.1943, (1994), § 79-2907; Laws 1995, LB 5, § 6.

**85-1707 Private institution of higher education, defined.**

Private institution of higher education shall mean a not-for-profit educational institution located within this state which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which is authorized by law to provide a program of education beyond the high school level, and which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(2) Provides an educational program for which it awards a bachelor's degree; provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree; provides a program of not less than two years in length which is acceptable for full credit toward a bachelor's degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, research, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(3) Is accredited by a regionally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; and

(4) Has a student admissions policy which does not violate any other Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 1981, LB 321, § 9; R.S.1943, (1994), § 79-2909; Laws 1995, LB 5, § 7; Laws 1998, LB 303, § 1.

**85-1708 Project, defined.**

(1) Project shall mean any property located within the state, constructed or acquired before or after August 30, 1981, that may be used or will be useful in connection with the instruction, feeding, recreation, or housing of students, the conducting of research, administration, or other work of a private institution of higher education, or any combination of the foregoing. Project shall include, but not be limited to, an academic facility, administrative facility, agricultural facility, assembly hall, athletic facility, auditorium, campus, communication facility, exhibition hall, housing for faculty and other staff, instructional facility, laboratory, library, maintenance facility, museum, offices, parking area, physical educational facility, recreational facility, research facility, stadium, storage facility, student facility, student health facility, student housing, student union, theatre, or utility facility.

(2) Project shall also mean and include the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by such private institution of higher education to finance the cost of a project or projects whenever the authority finds that such refunding or refinancing is in the public interest and either:

(a) Alleviates a financial hardship upon the private institution of higher education;

(b) Results in a lesser cost of education to its students; or

§ 85-1708 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(c) Enables the private institution of higher education to offer greater security for the financing of a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 5; R.S.1943, (1994), § 79-2905; Laws 1995, LB 5, § 8.

**85-1709 Property, defined.**

Property shall mean the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property shall not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship nor any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

**Source:** Laws 1981, LB 321, § 6; R.S.1943, (1994), § 79-2906; Laws 1995, LB 5, § 9.

**85-1710 Nebraska Educational Finance Authority; created.**

There is hereby created a body politic and corporate to be known as the Nebraska Educational Finance Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Nebraska Educational Finance Authority Act shall be deemed and held to be the performance of an essential public function of the state.

**Source:** Laws 1981, LB 321, § 10; Laws 1993, LB 465, § 7; R.S.1943, (1994), § 79-2910; Laws 1995, LB 5, § 10.

**85-1711 Authority; members; qualifications; appointment; terms; removal.**

The authority shall consist of seven members, to be appointed by the Governor, who shall be residents of the state, not more than four of whom shall be members of the same political party. At least one of the members shall be a trustee, director, officer, or employee of one or more private institutions of higher education in the state. At least one shall be a person having a favorable reputation for skill, knowledge, and experience in the field of finance. At least one shall be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the educational building construction field. At least one shall be a person experienced in and having a favorable reputation in the field of public accounting. The members of the authority first appointed shall serve for terms expiring as follows: One on December 31, 1982; two on December 31, 1983; two on December 31, 1984; and two on December 31, 1985, respectively, the term of each such member to be designated by the Governor. Upon the expiration of the term of any member, his or her successor shall be appointed for a term of four years and until a successor has been appointed and qualified. The Governor shall fill any vacancy for the remainder of the unexpired term. Any member of the authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be

expressly waived in writing by the accused member. Each member shall be eligible for reappointment to a successive term but shall be declared ineligible for three consecutive full terms.

**Source:** Laws 1981, LB 321, § 11; Laws 1984, LB 644, § 1; R.S.1943, (1994), § 79-2911; Laws 1995, LB 5, § 11.

**85-1712 Authority; officers; executive director; compensation; receive contributions.**

The Governor shall designate one of the members representing the private institutions of higher education to convene the organizational meeting of the authority and to serve as its temporary chairperson. At that meeting and annually thereafter, the authority shall elect one of its members as chairperson and another member as vice-chairperson. It may appoint an executive director and assistant executive director, who shall not be members of the authority but who shall serve at the pleasure of the authority. An assistant executive director shall perform the duties of the executive director in the event of the absence or inability to act of the executive director. They shall receive such compensation as shall be fixed by the authority. The authority may receive contributions to fund any of the expenses of the authority from private donors, including any one or more of the private institutions of higher education or an association representing the private institutions of higher education.

**Source:** Laws 1981, LB 321, § 12; Laws 1993, LB 465, § 8; R.S.1943, (1994), § 79-2912; Laws 1995, LB 5, § 12.

**85-1713 Authority; keep records and accounts; seal; certified copies.**

The executive director, assistant executive director, or any other person designated by resolution of the authority shall keep records and accounts of all proceedings and financial dealings of the authority, shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal, and shall be custodian of all funds of the authority. The executive director, assistant executive director, or other designated person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

**Source:** Laws 1981, LB 321, § 13; R.S.1943, (1994), § 79-2913; Laws 1995, LB 5, § 13.

**85-1714 Authority; quorum; actions; vacancy; effect.**

Four members of the authority shall constitute a quorum. The affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the Nebraska Educational Finance Authority Act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

**Source:** Laws 1981, LB 321, § 14; Laws 1984, LB 644, § 2; Laws 1993, LB 465, § 9; R.S.1943, (1994), § 79-2914; Laws 1995, LB 5, § 14.

**85-1715 Authority; officers, members, and employees; surety bond requirements.**

Before the issuance of any bonds under the Nebraska Educational Finance Authority Act, the chairperson, vice-chairperson, executive director, and assistant executive director, if any, and any other member of the authority authorized by resolution of the authority to handle funds or sign checks of the authority shall execute a surety bond in such amount as a majority of the members of the authority determine, or alternatively, the chairperson of the authority shall execute a blanket bond effecting such coverage. Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety company authorized to transact business in this state, and the cost of each such surety bond shall be paid by the authority.

**Source:** Laws 1981, LB 321, § 15; Laws 1993, LB 465, § 10; R.S.1943, (1994), § 79-2915; Laws 1995, LB 5, § 15.

**85-1716 Authority; members; expenses.**

The members of the authority shall receive no compensation for the performance of their duties as members, but each such member shall be paid his or her actual and necessary expenses while engaged in the performance of such duties as provided in sections 81-1174 to 81-1177 from any funds legally available therefor.

**Source:** Laws 1981, LB 321, § 16; R.S.1943, (1994), § 79-2916; Laws 1995, LB 5, § 16.

**85-1717 Authority member or employee; conflict of interest; abstention.**

Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer, or employee of any educational institution, financial institution, commercial bank or trust company, architecture firm, insurance company, or any firm, person, or corporation to serve as a member of the authority, but such trustee, director, officer, or employee shall abstain from any deliberation or action by the authority when the business affiliation of any such trustee, director, officer, or employee is involved. The executive director may serve less than full time. If the executive director serves less than full time, his or her other employment, if any, shall be reviewed by the members of the authority for potential conflicts of interest and whether such other employment would prevent the executive director from fully discharging his or her duties. No member of the authority may be a representative of a bank, investment banking firm, or other financial institution that underwrites the bonds of the authority.

**Source:** Laws 1981, LB 321, § 17; R.S.1943, (1994), § 79-2917; Laws 1995, LB 5, § 17.

**85-1718 Authority; purpose.**

The purpose of the authority shall be to assist private institutions of higher education in the constructing, financing, and refinancing of projects and to administer and operate the Nebraska Health Education Assistance Loan Pro-

gram as provided in sections 85-1754 to 85-1759 and the Nebraska Student Loan Assistance Program as provided in sections 85-1760 to 85-1762.

**Source:** Laws 1981, LB 321, § 18; Laws 1983, LB 159, § 3; Laws 1993, LB 465, § 11; R.S.1943, (1994), § 79-2918; Laws 1995, LB 5, § 18.

**85-1719 Authority; perpetual succession; bylaws.**

The authority shall have perpetual succession as a body politic and corporate and may adopt bylaws for the regulation of its affairs and the conduct of its business.

**Source:** Laws 1981, LB 321, § 19; R.S.1943, (1994), § 79-2919; Laws 1995, LB 5, § 19.

**85-1720 Authority; adopt seal.**

The authority may adopt an official seal and alter the same at its pleasure.

**Source:** Laws 1981, LB 321, § 20; R.S.1943, (1994), § 79-2920; Laws 1995, LB 5, § 20.

**85-1721 Authority; office; location.**

The authority may maintain an office at such place or places within Nebraska as it may designate.

**Source:** Laws 1981, LB 321, § 21; R.S.1943, (1994), § 79-2921; Laws 1995, LB 5, § 21.

**85-1722 Authority; sue and be sued.**

The authority may sue and be sued in its own name.

**Source:** Laws 1981, LB 321, § 22; R.S.1943, (1994), § 79-2922; Laws 1995, LB 5, § 22.

**85-1723 Authority; powers over project.**

The authority may determine the location and character of any project to be financed or refinanced under the Nebraska Educational Finance Authority Act and construct, reconstruct, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same. The authority may also enter into contracts for any or all of such purposes, enter into contracts for the management and operation of a project, and designate a private institution of higher education as its agent to determine the location and character of a project undertaken by such private institution of higher education under the act and as the agent of the authority, to construct, reconstruct, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project.

**Source:** Laws 1981, LB 321, § 23; Laws 1993, LB 465, § 12; R.S.1943, (1994), § 79-2923; Laws 1995, LB 5, § 23.

**85-1724 Authority; issuance of bonds authorized.**

§ 85-1724 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

The authority may issue bonds of the authority for any of its corporate purposes and fund or refund the same pursuant to the Nebraska Educational Finance Authority Act.

**Source:** Laws 1981, LB 321, § 24; Laws 1993, LB 465, § 13; R.S.1943, (1994), § 79-2924; Laws 1995, LB 5, § 24.

**85-1725 Authority; charge for services.**

The authority may charge and collect rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and contract with any person, partnership, limited liability company, association, or corporation or other body public or private, except that the authority shall have no jurisdiction over rates, rents, fees, and charges established by a private institution of higher education for its students other than to require that such rates, rents, fees, and charges by such institution be sufficient to discharge such institution's obligation to the authority.

**Source:** Laws 1981, LB 321, § 25; Laws 1993, LB 121, § 520; R.S.1943, (1994), § 79-2925; Laws 1995, LB 5, § 25.

**85-1726 Authority; rules and regulations for use of project; designate agent.**

The authority may establish rules and regulations for the use of a project or any portion thereof and designate a private institution of higher education as its agent to establish rules and regulations for the use of a project undertaken by such private institution of higher education.

**Source:** Laws 1981, LB 321, § 26; R.S.1943, (1994), § 79-2926; Laws 1995, LB 5, § 26.

**85-1727 Authority; personnel.**

The authority may employ consulting engineers, architects, attorneys, accountants, trustees, construction and finance experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and fix their compensation.

**Source:** Laws 1981, LB 321, § 27; R.S.1943, (1994), § 79-2927; Laws 1995, LB 5, § 27.

**85-1728 Authority; receive loans, grants, and contributions.**

The authority may receive and accept from any source loans or grants for or in aid of the construction of a project or any portion thereof, and receive and accept from any source loans, grants, aid, or contributions of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such loans, grants, aid, or contributions are made.

**Source:** Laws 1981, LB 321, § 28; R.S.1943, (1994), § 79-2928; Laws 1995, LB 5, § 28.

**85-1729 Authority; mortgage of certain property.**

The authority may mortgage all or any portion of any project or any other facilities conveyed to the authority for such purpose and the site or sites thereof, whether presently owned or subsequently acquired, for the benefit of the holders of the bonds of the authority issued to finance such project or any portion thereof or issued to refund or refinance outstanding indebtedness or to

reimburse an endowment or any similar fund of a private institution of higher education as permitted by the Nebraska Educational Finance Authority Act.

**Source:** Laws 1981, LB 321, § 29; Laws 1993, LB 465, § 14; R.S.1943, (1994), § 79-2929; Laws 1995, LB 5, § 29.

**85-1730 Authority; loans authorized; limitation.**

The authority may make loans to any private institution of higher education for the cost of any project or in anticipation of the receipt of tuition by the institution in accordance with an agreement between the authority and such private institution of higher education, except that (1) no such loan shall exceed the total cost of such project as determined by such private institution of higher education and approved by the authority and (2) any loan made in anticipation of the receipt of tuition shall not exceed the anticipated amount of tuition to be received by the private institution of higher education in the one-year period following the date of such loan.

**Source:** Laws 1981, LB 321, § 30; R.S.1943, (1994), § 79-2930; Laws 1995, LB 5, § 30; Laws 2003, LB 107, § 1.

**85-1731 Authority; make loans; issue bonds; conditions.**

The authority may make loans to a private institution of higher education and refund or reimburse outstanding obligations, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by such private institution of higher education, whether before or after August 30, 1981, for the cost of a project, including the power to issue bonds and make loans to a private institution of higher education to refinance indebtedness incurred or to reimburse advances made for projects undertaken prior thereto whenever the authority finds that such financing is in the public interest, and either: (1) Alleviates a financial hardship upon the private institution of higher education, (2) results in a lesser cost of education, or (3) enables the private institution of higher education to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 31; R.S.1943, (1994), § 79-2931; Laws 1995, LB 5, § 31.

**85-1732 Authority; administrative costs; apportionment.**

The authority may charge to and equitably apportion among participating private institutions of higher education its administrative costs and expenses incurred in the exercise of the powers and duties conferred by the Nebraska Educational Finance Authority Act.

**Source:** Laws 1981, LB 321, § 32; Laws 1993, LB 465, § 15; R.S.1943, (1994), § 79-2932; Laws 1995, LB 5, § 32.

**85-1733 Authority; general powers; joint projects.**

The authority may do all things necessary or convenient to carry out the purposes of the Nebraska Educational Finance Authority Act.

In carrying out the purposes of the act, the authority may undertake a project for two or more private institutions of higher education jointly, or for any

§ 85-1733 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

combination thereof, and thereupon all other provisions of the act shall apply to and be for the benefit of the authority and such joint participants.

**Source:** Laws 1981, LB 321, § 33; Laws 1993, LB 465, § 16; R.S.1943, (1994), § 79-2933; Laws 1995, LB 5, § 33.

**85-1734 Authority; combine and substitute projects; bonds; additional series.**

Notwithstanding any other provision contained in the Nebraska Educational Finance Authority Act, the authority may combine for financing purposes, with the consent of all of the private institutions of higher education which are involved, the project or projects and some or all future projects of any private institution or private institutions of higher education, but the money set aside in any fund or funds pledged for any series or issue of bonds shall be held for the sole benefit of such series or issue separate and apart from any money pledged for any other series or issue of bonds of the authority. To facilitate the combining of projects, bonds may be issued in series under one or more resolutions or trust agreements and be fully open end, thus providing for the unlimited issuance of additional series, or partially open end, limited as to additional series, all in the discretion of the authority. Notwithstanding any other provision of the act to the contrary, the authority may, in its discretion, permit a private institution of higher education to substitute one or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for any project financed under the act on such terms and subject to such conditions as the authority may prescribe.

**Source:** Laws 1981, LB 321, § 34; Laws 1993, LB 465, § 17; R.S.1943, (1994), § 79-2934; Laws 1995, LB 5, § 34.

**85-1735 Expenses; how paid; liability; limitation.**

All expenses incurred in carrying out the Nebraska Educational Finance Authority Act shall be payable solely from funds provided under the act, and no liability or obligation shall be incurred by the authority beyond the extent to which money has been provided under the act.

**Source:** Laws 1981, LB 321, § 35; Laws 1993, LB 465, § 18; R.S.1943, (1994), § 79-2935; Laws 1995, LB 5, § 35.

**85-1736 Authority; acquisition of property.**

The authority is authorized and empowered, directly or by and through a private institution of higher education, as its agent, to acquire by purchase, gift, or devise, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, and including existing facilities of a private institution of higher education, as it may deem necessary or convenient for the construction, acquisition, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of a private institution of higher education as its agent.

**Source:** Laws 1981, LB 321, § 36; R.S.1943, (1994), § 79-2936; Laws 1995, LB 5, § 36.

**85-1737 Authority; financing obligations completed; convey title to private institution.**

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for a private institution of higher education, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the bond resolution authorizing the same have been satisfied and the lien created by such bond resolution has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds, conveyances, and other instruments, if any, as are necessary and required to convey title to such project or projects to such private institution of higher education.

**Source:** Laws 1981, LB 321, § 37; R.S.1943, (1994), § 79-2937; Laws 1995, LB 5, § 37.

**85-1738 Authority; bonds; issuance; form; proceeds; how used; replacement; liability.**

The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds for the purpose of (1) paying, refinancing, or reimbursing all or any part of the cost of a project, (2) administering and operating the Nebraska Health Education Assistance Loan Program and the Nebraska Student Loan Assistance Program, or (3) making loans to any private institution of higher education in anticipation of the receipt of tuition by the institution. Except to the extent payable from payments to be made on securities or federally guaranteed securities as provided in sections 85-1741 and 85-1742, the principal of and the interest on such bonds shall be payable solely out of the revenue of the authority derived from the project or program to which they relate and from any other facilities or assets pledged or made available therefor by the private institution of higher education for whose benefit such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, without regard to any limit contained in any other statute or law of the State of Nebraska, shall mature at such time or times not exceeding forty years from the date thereof, all as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the authorizing resolution. Except to the extent required by the Nebraska Educational Finance Authority Act and for bonds issued to fund the Nebraska Student Loan Assistance Program, such bonds are to be paid out of the revenue of the project to which they relate and, in certain instances, the revenue of certain other facilities, and subject to the provisions of sections 85-1741 and 85-1742 with respect to a pledge of securities or government securities, the bonds may be unsecured or secured in the manner and to the extent determined by the authority in its discretion.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or without the state. The bonds shall be signed in the name of the authority, by its chairperson or vice-chairperson or by a facsimile signature of such person, the official seal of the authority or a facsimile thereof shall be affixed thereto and attested by the

manual or facsimile signature of the executive director or assistant executive director of the authority, and any coupons attached thereto shall bear the facsimile signature of the executive director or assistant executive director of the authority. In case any official of the authority whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such an official before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained an official of the authority until such delivery.

All bonds issued under the act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the law of the State of Nebraska. The bonds may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in such manner as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The bonds may be sold in such manner, either at public or private sale, as the authority may determine.

The proceeds of the bonds of each issue shall be used solely for the payment of the costs of the project or program for which such bonds have been issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement provided for in section 85-1740 securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, are less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost of the project or program for which they were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the authority may under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

The authority may also provide for the replacement of any bonds which become mutilated or are destroyed or lost. Bonds may be issued under the act without obtaining the consent of any officer, department, division, commission, board, bureau, or agency of the state and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by the act. The authority may out of any funds available therefor purchase its bonds. The authority may hold, pledge, cancel, or resell such bonds, subject to and in accordance with any agreement with the bondholders. Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**Source:** Laws 1981, LB 321, § 38; Laws 1983, LB 159, § 4; Laws 1993, LB 465, § 19; R.S.1943, (1994), § 79-2938; Laws 1995, LB 5, § 38; Laws 2003, LB 107, § 2.

**85-1739 Bond issuance; resolution; provisions enumerated.**

Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to (1) pledging or assigning the revenue of the project or loan with respect to which such bonds are to be issued or the revenue of any other property, facilities, or loans, (2) the rentals, fees, and other amounts to be charged, the amounts to be raised in each year thereby, and the use and disposition of such amounts, (3) the setting aside of reserves or sinking funds, and the regulation, investment, and disposition thereof, (4) limitations on the use of the project, (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds, (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds, (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given, (8) limitations on the amount of money derived from the project or loan to be expended for operating, administrative, or other expenses of the authority, (9) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default, (10) the mortgaging of a project and the site thereof or any other property for the purpose of securing the bondholders, and (11) any other matters relating to the bonds which the authority deems desirable.

**Source:** Laws 1981, LB 321, § 39; Laws 1983, LB 159, § 5; R.S.1943, (1994), § 79-2939; Laws 1995, LB 5, § 39.

**85-1740 Bonds; secured by trust agreement; contents; expenses; how treated.**

In the discretion of the authority any bonds issued under the Nebraska Educational Finance Authority Act may be secured by a trust agreement by and between the authority and an incorporated trustee or trustees which may be any trust company or bank having the powers of a trust company within the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenue to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof.

Any pledge or assignment made by the authority pursuant to this section shall be valid and binding from the time that the pledge or assignment is made, and the revenue so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or any further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof.

The resolution or any trust agreement by which a pledge is created or an assignment made shall be filed or recorded in the records of the authority and with the Secretary of State and, in the case of a project, in each county in which the project is located.

§ 85-1740 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, or provided for in the act.

Any bank or trust company incorporated under the laws of this state which acts as depository of the proceeds of the bonds, any revenue, or other money shall furnish such indemnifying bonds or pledge such securities as may be required by the authority.

Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. Any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

**Source:** Laws 1981, LB 321, § 40; Laws 1993, LB 465, § 20; R.S.1943, (1994), § 79-2940; Laws 1995, LB 5, § 40.

**85-1741 Bonds issued to purchase securities of private institution; provisions applicable.**

In addition to any other methods of financing authorized in the Nebraska Educational Finance Authority Act, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from an endowment or any similar fund of a private institution of higher education as authorized by section 85-1731 by issuing its bonds for the purpose of purchasing the securities of a private institution of higher education. Any such securities shall have the same principal amounts, maturities, and interest rates as the bonds being issued, may be secured by a first mortgage lien on or security interest in any real or personal property, subject to such exceptions as the authority may approve and created by a mortgage or security instrument satisfactory to the authority, and may be insured or guaranteed by others. Any such bonds shall be secured by a pledge of such securities under the trust agreement creating such bonds, shall be payable solely out of the payments to be made on such securities, and shall not exceed in principal amount the cost of such project or program, the refunding of such indebtedness, or reimbursement of such advances as determined by the private institution of higher education and approved by the authority. In other respects any such bonds shall be subject to the act, including sections 85-1738 and 85-1739, and the trust agreement creating such bonds may contain any of the provisions set forth in section 85-1740 as the authority may consider appropriate.

If a project is financed pursuant to this section, the title to such project shall remain in the private institution of higher education owning the same, subject to the lien of the mortgage or security interest, if any, securing the securities then being purchased, and there shall be no lease of such facility between the authority and such private institution of higher education.

Section 85-1737 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the private institution of higher education issuing such securities when such bonds have been fully paid and retired or when adequate provision has been made to pay and retire such bonds

fully and all other conditions of the trust agreement creating such bonds have been satisfied and any lien established pursuant to this section has been released in accordance with the provisions of the trust agreement.

**Source:** Laws 1981, LB 321, § 41; Laws 1993, LB 465, § 21; R.S.1943, (1994), § 79-2941; Laws 1995, LB 5, § 41.

**85-1742 Bonds issued to acquire federally guaranteed securities; provisions applicable.**

Notwithstanding any other provision of the Nebraska Educational Finance Authority Act to the contrary, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from any endowment or any similar fund of a private institution of higher education as authorized by the act, by issuing its bonds pursuant to a plan of financing involving the acquisition of any federally guaranteed security or securities or the acquisition or entering into of commitments to acquire any federally guaranteed security or securities. For purposes of this section, federally guaranteed security shall mean any direct obligation of or obligation the principal of and interest on which are fully guaranteed or insured by the United States of America or any obligation issued by or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America, including without limitation any such obligation that is issued pursuant to the National Housing Act, or any successor provision of law, each as amended from time to time.

In furtherance of the powers granted in this section, the authority may acquire or enter into commitments to acquire any federally guaranteed security and pledge or otherwise use any such federally guaranteed security in such manner as the authority deems in its best interest to secure or otherwise provide a source of repayment of any of its bonds issued to finance or refinance a project or program or may enter into any appropriate agreement with any private institution of higher education whereby the authority may make a loan to any such private institution of higher education for the purpose of acquiring or entering into commitments to acquire any federally guaranteed security.

Any agreement entered into pursuant to this section may contain such provisions as are deemed necessary or desirable by the authority for the security or protection of the authority or the holders of such bonds, except that the authority, prior to making any such acquisition, commitment, or loan, shall first determine and enter into an agreement with any such private institution of higher education or any other appropriate institution or corporation to require that the proceeds derived from the acquisition of any such federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project or program.

Any bonds issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing such project or program as determined by the participating private institution of higher education and approved by the authority, except that such costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any insurance or guarantee of any obligation issued or incurred in connection with any federally guaranteed security. In other respects any such bonds shall be subject to the act, including sections 85-1738 and

85-1739, and the trust agreement creating such bonds may contain such of the provisions set forth in section 85-1740 as the authority may deem appropriate.

If a project is financed or refinanced pursuant to this section, the title to such project shall remain in the participating private institution of higher education owning the same, subject to the lien of any mortgage or security interest securing, directly or indirectly, the federally guaranteed securities then being purchased or to be purchased, and there shall be no lease of such facility between the authority and such institution.

Section 85-1737 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the issuer of such securities when such securities have been fully paid, when such bonds have been fully paid and retired, or when adequate provision, not involving the application of such securities, has been made to pay and retire such bonds fully, all other conditions of the resolution, trust agreement, or indenture creating such bonds have been satisfied, and the lien on such bonds has been released in accordance with the act.

**Source:** Laws 1981, LB 321, § 42; Laws 1993, LB 465, § 22; R.S.1943, (1994), § 79-2942; Laws 1995, LB 5, § 42.

**85-1743 Refunding bonds; issuance authorized; provisions applicable.**

The authority is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued by it under the Nebraska Educational Finance Authority Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of maturity or earlier redemption of such bonds, and, in the case of a project and if deemed advisable by the authority, for the additional purposes of constructing and acquiring improvements, extensions, or enlargements of the project in connection with which the bonds to be refunded were issued and of paying any expenses which the authority determines may be necessary or incidental to the issuance of such refunding bonds and the construction and acquisition of such improvements, extensions, or enlargements. Such refunding bonds shall be payable solely out of the revenue of the project, including any such improvements, extensions, or enlargements thereto, or program to which the bonds being refunded relate or as otherwise described in sections 85-1738, 85-1741, 85-1742, 85-1757, and 85-1758. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, the rights, duties, and obligations of the authority with respect to such bonds, and the manner of sale thereof shall be governed by the act insofar as applicable.

The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or earlier redemption of such outstanding bonds either on their earliest or any subsequent redemption date, upon the purchase of such bonds, or at the maturity of such bonds and may, pending such application, be placed in escrow to be applied to such purchase, retirement at maturity, or earlier redemption.

Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America or obligations the timely payment of principal and interest on which is fully guaranteed by the

United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. Only after the terms of the escrow have been fully satisfied and carried out may any balance of such proceeds, interest, income, or profits earned or realized on the investments thereof be returned to the private institution of higher education for whose benefit the refunded bonds were issued for use by it in any lawful manner.

All such bonds shall be subject to the act in the same manner and to the same extent as other revenue bonds issued pursuant to the act.

**Source:** Laws 1981, LB 321, § 43; Laws 1983, LB 159, § 6; Laws 1993, LB 465, § 23; R.S.1943, (1994), § 79-2943; Laws 1995, LB 5, § 43.

**85-1744 Bond issuance; state or political subdivision; no obligation; statement; expenses.**

Bonds issued pursuant to the Nebraska Educational Finance Authority Act shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be a limited obligation of the authority payable solely from the funds, securities, or government securities pledged for their payment as authorized in the act unless such bonds are refunded by refunding bonds issued under the act, which refunding bonds shall be payable solely from funds, securities, or government securities pledged for their payment as authorized in the act. All such revenue bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not an obligation of the State of Nebraska or of any political subdivision thereof but are limited obligations of the authority payable solely from revenue, securities, or government securities, as the case may be, pledged for their payment. All expenses incurred in carrying out the act shall be payable solely from funds provided under the authority of the act, and nothing contained in the act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

**Source:** Laws 1981, LB 321, § 44; Laws 1993, LB 465, § 24; R.S.1943, (1994), § 79-2944; Laws 1995, LB 5, § 44.

**85-1745 Authority; charge rents; lease facilities.**

Except for projects financed or refinanced pursuant to sections 85-1741 and 85-1742, the authority shall fix, revise, charge, and collect rents for the use of each project and contract with any private institution of higher education in respect thereof. Each lease entered into by the authority with a private institution of higher education shall provide that the rents payable by the private institution of higher education shall be sufficient at all times (1) to pay its share of the administrative costs and expenses of the authority, (2) to pay the authority's cost, if any, of maintaining, repairing, and operating the project and each and every portion thereof, (3) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the authority issued with respect to

§ 85-1745 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

such project as the same shall become due and payable, and (4) to create and maintain reserves which may be provided for in the bond resolution or trust agreement relating to such bonds of the authority.

With respect to projects financed pursuant to sections 85-1741 and 85-1742, the authority shall require the private institution of higher education involved to enter into agreements obligating such institution to make payments sufficient to accomplish the purposes described in this section.

**Source:** Laws 1981, LB 321, § 45; R.S.1943, (1994), § 79-2945; Laws 1995, LB 5, § 45.

**85-1746 Money received by authority; deemed trust funds; investment.**

All money received by the authority, whether as proceeds from the sale of bonds, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in the Nebraska Educational Finance Authority Act but, prior to the time when needed for use, may be invested to the extent and in the manner provided for the investment of public funds of the state under the laws then in effect. Such funds shall be deposited, held, and secured in accordance with the general laws of the state relating to the handling of public funds, except to the extent provided otherwise in the resolution authorizing the issuance of the related bonds or in the trust agreement securing such bonds. The resolution authorizing the issuance of such bonds or the trust agreement securing such bonds shall provide that any officer to whom or any bank or trust company to which such money is entrusted shall act as trustee of such money and shall hold and apply the same for the purposes of the act, subject to the act, and of the authorizing resolution or trust agreement.

**Source:** Laws 1981, LB 321, § 46; Laws 1993, LB 465, § 25; R.S.1943, (1994), § 79-2946; Laws 1995, LB 5, § 46.

**85-1747 Bondholders and trustee; enforcement of rights.**

Any holder of bonds or of any of the coupons appertaining thereto issued under the Nebraska Educational Finance Authority Act and the trustee under any trust agreement, except to the extent the rights given in the act may be restricted by the authorizing resolution or trust agreement, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state, the act, or such trust agreement or resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by the act or by such trust agreement or resolution to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, rents, fees, and charges authorized in the act and required by the provisions of such resolution or trust agreement to be fixed, established, and collected.

Such rights shall include the right to compel the performance of all duties of the authority required by the act or the bond resolution or trust agreement to enjoin unlawful activities and, in the event of default with respect to the payment of any principal of and premium, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the bond resolution, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate a project, the revenue of which is pledged to the payment of the principal of and premium, if any, and interest on

such bonds, with full power to pay and to provide for payment of the principal of and premium, if any, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, excluding any power to pledge additional revenue of the authority to the payment of such principal, premium, and interest, and to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations.

**Source:** Laws 1981, LB 321, § 47; Laws 1993, LB 465, § 26; R.S.1943, (1994), § 79-2947; Laws 1995, LB 5, § 47.

**85-1748 Act, how construed.**

The Nebraska Educational Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

**Source:** Laws 1981, LB 321, § 48; Laws 1993, LB 465, § 27; R.S.1943, (1994), § 79-2948; Laws 1995, LB 5, § 48.

**85-1749 Authority; journal; public records.**

All final actions of the authority shall be recorded in a journal, and the journal and all instruments and documents relating thereto shall be kept on file at the office of the authority and shall be open to the inspection of the public at all reasonable times.

**Source:** Laws 1981, LB 321, § 49; R.S.1943, (1994), § 79-2949; Laws 1995, LB 5, § 49.

**85-1750 Authority; public purpose; exemptions from taxation.**

The exercise of the powers granted by the Nebraska Educational Finance Authority Act shall be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, for the improvement of their health and living conditions, and for the development of their intellectual and mental capacities and skills, and as the operation, maintenance, financing, or refinancing of a project or program by the authority or its agent will constitute the performance of essential governmental functions and serve a public purpose, neither the authority nor its agent shall be required to pay any taxes or assessments, upon or with respect to a project or any property acquired or used by the authority or its agent under the act, upon the income therefrom, or upon any other amounts received by the authority in respect thereof, including payments of principal of or premium or interest on or in respect of any securities purchased pursuant to section 85-1741 or any government securities involved in a plan of financing pursuant to section 85-1742. The bonds issued under the act, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity, proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the State of Nebraska for all purposes except the state inheritance tax.

**Source:** Laws 1981, LB 321, § 50; Laws 1993, LB 465, § 28; R.S.1943, (1994), § 79-2950; Laws 1995, LB 5, § 50.

**85-1751 Bondholders; pledge; agreement of the state.**

The State of Nebraska does hereby pledge to and agree with the holders of any obligations issued under the Nebraska Educational Finance Authority Act and with those parties who may enter into contracts with the authority pursuant to the act that the state will not limit or alter the rights vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, except that nothing contained in this section shall preclude such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority.

**Source:** Laws 1981, LB 321, § 51; Laws 1993, LB 465, § 29; R.S.1943, (1994), § 79-2951; Laws 1995, LB 5, § 51.

**85-1752 Act; supplemental to other laws.**

The Nebraska Educational Finance Authority Act shall be deemed to provide a complete, additional, and alternative method for doing the things authorized in the act and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, and the construction and acquisition of a project pursuant to the act by the authority need not comply with the requirements of any competitive bidding law or other restriction imposed on the procedure for award of contracts for the construction and equipping of a project or the lease, sale, or disposition of property of the authority, except that if the prospective lessee so requests in writing, the authority shall call for construction bids in such manner as shall be determined by the authority with the approval of such lessee. Except as otherwise expressly provided in the act, none of the powers granted to the authority under the act shall be subject to the supervision or regulation by or require the approval or consent of any municipality, political subdivision, commission, board, body, bureau, official, or agency or the state.

**Source:** Laws 1981, LB 321, § 52; Laws 1993, LB 465, § 30; R.S.1943, (1994), § 79-2952; Laws 1995, LB 5, § 52.

**85-1753 Act; provisions controlling.**

To the extent that the Nebraska Educational Finance Authority Act is inconsistent with the provisions of any general statute or special act or parts thereof, the Nebraska Educational Finance Authority Act shall be deemed controlling.

**Source:** Laws 1981, LB 321, § 53; Laws 1993, LB 465, § 31; R.S.1943, (1994), § 79-2953; Laws 1995, LB 5, § 53.

**85-1754 Nebraska Health Education Assistance Loan Program; established.**

There is hereby established, in accordance with Public Law 94-484, the Nebraska Health Education Assistance Loan Program, to be financed by the authority in the manner provided in the Nebraska Educational Finance Authority Act.

**Source:** Laws 1983, LB 159, § 7; Laws 1993, LB 465, § 32; R.S.1943, (1994), § 79-2954; Laws 1995, LB 5, § 54.

**85-1755 Nebraska Health Education Assistance Loan Program; authority; powers.**

The authority may:

- (1) Make loans;
- (2) Participate in the financing of loans;
- (3) Purchase or participate in the purchase of loans;
- (4) Sell or participate in the sale of loans;
- (5) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (4) of this section;
- (6) Do all things necessary and convenient to carry out the purposes of sections 85-1754 to 85-1759 in connection with the administering and servicing of loans, including contracting with any person, firm, or other body, public or private;
- (7) Enter into any agreements necessary to effect the guarantee, insuring, administering, or servicing of loans;
- (8) Adopt and promulgate rules and regulations governing and establish standards for participation in the program created by section 85-1754, and establish other administrative procedures consistent with Public Law 94-484; and
- (9) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1983, LB 159, § 8; R.S.1943, (1994), § 79-2955; Laws 1995, LB 5, § 55.

**85-1756 Nebraska Health Education Assistance Loan Program; loans; how funded.**

Any loan made, purchased, or caused to be made or purchased pursuant to section 85-1755 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to sections 85-1754 to 85-1759. The trust agreement or indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 85-1740 as the authority shall deem appropriate and any other provisions, not in violation of law, as the authority shall deem reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans, to purchase loans, to cause loans to be made or purchased, to pay financing costs, including, but not limited to, legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1983, LB 159, § 9; R.S.1943, (1994), § 79-2956; Laws 1995, LB 5, § 56.

**85-1757 Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.**

Notwithstanding section 85-1738, all bonds, notes, or other obligations issued by the authority for the Nebraska Health Education Assistance Loan Program shall be payable out of the revenue generated in connection with loans funded

under sections 85-1754 to 85-1759, or from reserves or other money available for such purpose as may be designated in the resolution of the authority under which the bonds, notes, or other obligations are issued or as may be designated in a trust indenture authorized by the authority.

**Source:** Laws 1983, LB 159, § 10; R.S.1943, (1994), § 79-2957; Laws 1995, LB 5, § 57.

**85-1758 Nebraska Health Education Assistance Loan Program; bonds; security.**

Notwithstanding section 85-1740, the principal of and interest on any bonds issued by the authority for the Nebraska Health Education Assistance Loan Program shall be secured by a pledge of the revenue and other money out of which such principal and interest shall be made payable and may be secured by a trust indenture, mortgage, or deed of trust, including an assignment of a loan or contract right of the authority pursuant to a loan, covering all or any part of a loan from which the revenue or receipts so pledged may be derived.

**Source:** Laws 1983, LB 159, § 11; R.S.1943, (1994), § 79-2958; Laws 1995, LB 5, § 58.

**85-1759 Nebraska Health Education Loan Repayment Fund; created; use.**

There is hereby created a separate fund, to be known as the Nebraska Health Education Loan Repayment Fund, which shall consist of all revenue generated in connection with loans funded pursuant to the Nebraska Educational Finance Authority Act. The authority may pledge revenue received or to be received by the fund to secure bonds, notes, or other obligations issued pursuant to the act. The authority may create such subfunds or accounts within the fund as it deems necessary or advisable.

**Source:** Laws 1983, LB 159, § 12; Laws 1993, LB 465, § 33; R.S.1943, (1994), § 79-2959; Laws 1995, LB 5, § 59.

**85-1760 Nebraska Student Loan Assistance Program; established.**

There is hereby established the Nebraska Student Loan Assistance Program to be financed by the authority in the manner provided in the Nebraska Educational Finance Authority Act.

**Source:** Laws 1993, LB 465, § 34; R.S.1943, (1994), § 79-2961; Laws 1995, LB 5, § 60.

**85-1761 Nebraska Student Loan Assistance Program; authority; powers.**

The authority may:

- (1) Make loans to private institutions of higher education to assist such institutions in providing loans to their full-time students to assist them in financing the cost of their education while taking courses leading to an academic degree;
- (2) Participate in the financing of such loans;
- (3) Sell or participate in the sale of such loans;
- (4) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (3) of this section;

(5) Do all things necessary and convenient to carry out the purposes of this section and section 85-1762 in connection with the administering of such loans, including contracting with any person, firm, or other body, public or private;

(6) Enter into any agreements necessary to effect the guarantee, insuring, or administering of such loans;

(7) Adopt and promulgate rules and regulations governing and establish standards for participation in the Nebraska Student Loan Assistance Program; and

(8) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1993, LB 465, § 35; R.S.1943, (1994), § 79-2962; Laws 1995, LB 5, § 61.

**85-1762 Nebraska Student Loan Assistance Program; loans; how funded.**

Any loan made or caused to be made or purchased pursuant to section 85-1761 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to this section and sections 85-1738, 85-1743, 85-1760, and 85-1761. The trust agreement or indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 85-1740 as the authority deems appropriate and any other provisions, not in violation of law, as the authority deems reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans to such institutions and cause loans to be made by the institutions to their qualified students, to pay financing costs, including legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1993, LB 465, § 36; R.S.1943, (1994), § 79-2963; Laws 1995, LB 5, § 62.

**85-1763 Change in name; effect.**

It is the intent of the Legislature that the changes made by Laws 1993, LB 465, in the name of the Nebraska Educational Facilities Authority Act to the Nebraska Educational Finance Authority Act and in the name of the Nebraska Educational Facilities Authority to the Nebraska Educational Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 9, 1993.

**Source:** Laws 1993, LB 465, § 37; R.S.1943, (1994), § 79-2964; Laws 1995, LB 5, § 63.

**ARTICLE 18**

**EDUCATIONAL SAVINGS PLAN TRUST**

Section	
85-1801.	Legislative findings.
85-1802.	Terms, defined.
85-1803.	Funding.

**§ 85-1801 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION**

Section

- 85-1804. Nebraska educational savings plan trust; created; State Treasurer; Nebraska Investment Council; powers and duties.
- 85-1805. Advertising or promotional materials; restriction.
- 85-1806. Participation agreements; terms and conditions.
- 85-1807. Deposit of funds; participation agreement; benefit received.
- 85-1808. Participation agreement; cancellation; when; effect.
- 85-1809. Ownership rights under participation agreement.
- 85-1810. Benefits received; effect on other student aid.
- 85-1811. Annual audit.
- 85-1812. Benefits received; tax consequences.
- 85-1813. Assets of trust; how treated.
- 85-1814. Sections; how construed.

**85-1801 Legislative findings.**

The Legislature finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education, and the general welfare of the citizens of the state will be enhanced by establishing a program which allows parents and others interested in the higher education of our youth to invest money in a public trust for future application to the payment of higher education costs. The creation of the means of encouragement for persons to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to parents and others interested in the higher education of our youth an opportunity to fund future higher education needs, it is necessary that a public trust be established in which money may be invested for future educational use. It is also necessary to establish an endowment fund which may not be funded with public funds but may receive gifts, grants, and donations from private parties, which will be made available to participants in the trust to enhance their savings invested for the payment of future higher education costs.

**Source:** Laws 2000, LB 1003, § 1.

**85-1802 Terms, defined.**

For purposes of sections 85-1801 to 85-1814:

- (1) Administrative fund means the administrative fund created in section 85-1807;
- (2) Beneficiary means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary;
- (3) Benefits means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education;
- (4) Endowment fund means the endowment fund created in section 85-1807;
- (5) Higher education costs means the certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during

the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis. Higher education costs shall not include any amounts in excess of those allowed by section 529 of the Internal Revenue Code;

(6) Institution of higher education means an institution described in section 529 of the Internal Revenue Code which is eligible to participate in the United States Department of Education's student aid programs;

(7) Nebraska educational savings plan trust means the trust created in section 85-1804;

(8) Nebraska institution of higher education means an institution described in section 529 of the Internal Revenue Code which is eligible to participate in the United States Department of Education's student aid program and which is located in Nebraska;

(9) Participant means an individual, an individual's legal representative, or any other legal entity authorized to establish a savings account under section 529 of the Internal Revenue Code who has entered into a participation agreement for the advance payment of higher education costs on behalf of a beneficiary;

(10) Participation agreement means an agreement between a participant and the Nebraska educational savings plan trust entered into under sections 85-1801 to 85-1814;

(11) Program fund means the program fund created in section 85-1807;

(12) Refund penalty means the amount assessed by the State Treasurer for cancellation of a participation agreement or other refund which is not considered a de minimis penalty pursuant to section 529 of the Internal Revenue Code;

(13) Section 529 of the Internal Revenue Code means such section of the code and the regulations interpreting such section, as such section and regulations existed on April 18, 2001; and

(14) Tuition and fees means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

**Source:** Laws 2000, LB 1003, § 2; Laws 2001, LB 750, § 1.

#### **85-1803 Funding.**

The Nebraska educational savings plan trust shall be operated with no General Fund appropriations. Money from the trust transferred from the program fund or endowment fund to the administrative fund in an amount authorized by an appropriation from the Legislature shall be utilized to pay for the costs of administering, operating, and maintaining the trust, to the extent permitted by section 529 of the Internal Revenue Code. The administrative fund shall not be credited with any money other than money transferred from the program fund or endowment fund in an amount authorized by an appropriation by the Legislature or any interest income earned on the balances held in the administrative fund.

**Source:** Laws 2000, LB 1003, § 3; Laws 2003, LB 574, § 27.

**85-1804 Nebraska educational savings plan trust; created; State Treasurer; Nebraska Investment Council; powers and duties.**

The Nebraska educational savings plan trust is created. The State Treasurer is the trustee of the trust and as such is responsible for the administration, operation, and maintenance of the program and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 85-1801 to 85-1814 pertaining to the administration, operation, and maintenance of the trust and program, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the administrative fund, endowment fund, and program fund, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust and program. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the administrative fund, endowment fund, and program fund. The State Treasurer or his or her designee shall have the power to:

- (1) Enter into agreements with any institution of higher education, the state, any federal or other state agency, or any other entity to implement sections 85-1801 to 85-1814, except agreements which pertain to the investment of money in the administrative fund, endowment fund, or program fund;
- (2) Carry out the duties and obligations of the trust;
- (3) Accept any grants or gifts which shall be deposited into the endowment fund;
- (4) Carry out studies and projections to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;
- (5) Participate in any federal, state, or local governmental program for the benefit of the trust;
- (6) Procure insurance against any loss in connection with the property, assets, or activities of the trust as provided in section 81-8,239.01;
- (7) Solicit and accept for the benefit of the endowment fund gifts, grants, and donations from private parties;
- (8) Enter into participation agreements with participants;
- (9) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;
- (10) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 85-1801 to 85-1814;
- (11) Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsels, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice regarding trust administration and operation, except contracts which

pertain to the investment of the administrative, endowment, or program funds; and

(12) Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations, refund penalties, and late payments with respect to participation agreements.

The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the trust. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust, establish investment guidelines, objectives, and performance standards with respect to the assets held by the trust, and approve any fees, commissions, and expenses, which directly or indirectly affect the return on assets.

**Source:** Laws 2000, LB 1003, § 4; Laws 2001, LB 750, § 2; Laws 2003, LB 574, § 28.

#### **85-1805 Advertising or promotional materials; restriction.**

Any advertising or promotional materials relating to the Nebraska educational savings plan trust may include references to a public office but shall not refer to an officeholder by name.

**Source:** Laws 2000, LB 1003, § 5.

#### **85-1806 Participation agreements; terms and conditions.**

The Nebraska educational savings plan trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and conditions:

(1) A participation agreement shall require a participant to agree to invest a specific amount of money in the trust for the benefit of a beneficiary as allowed by section 529 of the Internal Revenue Code. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The maximum contribution shall not exceed the amount allowed under section 529 of the Internal Revenue Code. The State Treasurer may set a maximum cumulative contribution, as necessary, to maintain compliance with section 529 of the Internal Revenue Code. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans or to ensure compliance with section 529 of the Internal Revenue Code or any other applicable laws and regulations;

(2) Beneficiaries designated in participation agreements shall meet the requirements established by the trustee and section 529 of the Internal Revenue Code;

(3) Payment of benefits provided under participation agreements shall be made in a manner consistent with section 529 of the Internal Revenue Code;

(4) The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will (a) be admitted to an institution of higher education, (b) if admitted, be determined a resident for tuition purposes by the institution of higher education, (c) be allowed to continue attendance at the institution of

higher education following admission, or (d) graduate from the institution of higher education;

(5) A beneficiary under a participation agreement may be changed as permitted under the rules and regulations adopted under sections 85-1801 to 85-1814 and consistent with section 529 of the Internal Revenue Code upon written request of the participant as long as the substitute beneficiary is eligible for participation. Participation agreements may otherwise be freely amended throughout their term in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule and regulation; and

(6) Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions and upon payment of applicable fees and costs set forth and contained in the rules and regulations.

**Source:** Laws 2000, LB 1003, § 6; Laws 2001, LB 750, § 3.

**85-1807 Deposit of funds; participation agreement; benefit received.**

(1) The State Treasurer shall deposit money received by the Nebraska educational savings plan trust into three funds: The program fund, the endowment fund, and the administrative fund. The State Treasurer shall deposit money received by the trust into the appropriate fund. The State Treasurer and Accounting Administrator of the Department of Administrative Services shall determine the state fund types necessary to comply with section 529 of the Internal Revenue Code and state policy. The money in the funds shall be invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. All money paid by participants in connection with participation agreements and all investment income earned on such money shall be deposited as received into separate accounts within the program fund. All money received by the trust from the proceeds of gifts and other endowments for the purposes of the trust and all investment income earned on such money shall be deposited as received into the endowment fund. The program fund, administrative fund, and endowment fund shall be separately administered. Any gifts, grants, or donations to the trust for deposit to the endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and shall not be included in the income of the donor for state income tax purposes. Contributions to the trust made by participants or received in the form of gifts, grants, or donations may only be made in the form of cash. All funds generated in connection with participation agreements shall be deposited into the appropriate accounts within the program fund. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

(2) Each beneficiary under a participation agreement shall receive a pro rata interest in the endowment fund each year after any transfers to the administrative fund have been made. The amount received from the endowment fund shall be in the ratio that the principal amount paid by the participant under the participation agreement and investment income earned to date under the agreement bears to the principal amount of all money, funds, and securities then held in the program fund, but not to exceed the amount which, in combination with the current payment due from the program fund, equals the beneficiary's higher education costs for the current period of enrollment.

Money accrued by participants in the program fund may be used for payments to any institution of higher education. No rights to any money derived from the endowment fund shall exist if money payable under the participation agreement is paid to an institution of higher education which is not a Nebraska institution of higher education.

**Source:** Laws 2000, LB 1003, § 7; Laws 2003, LB 574, § 29.

**85-1808 Participation agreement; cancellation; when; effect.**

(1) A participant may cancel a participation agreement at will. The trustee shall determine and collect a refund penalty by deducting the refund penalty from the returned funds. Collected refund penalties shall be deposited in the endowment fund. Endowment fund money credited to the program account shall be forfeited and returned to the endowment fund.

(2) Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of a refund or termination of a participation agreement:

(a) Death of the beneficiary;

(b) Permanent disability or mental incapacity of the beneficiary;

(c) The beneficiary is awarded a scholarship as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount; or

(d) A qualified rollover is made as permitted by section 529 of the Internal Revenue Code, except that if a qualified rollover is made into a plan sponsored by another state or entity, the participation agreement shall be deemed to have been canceled for purposes of subdivision (8)(d) of section 77-2716 and federal adjusted gross income shall be increased to the extent previously deducted as a contribution to the trust.

(3) In the event of cancellation of a participation agreement for any of the causes listed in subsection (2) of this section, the participant shall be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, less any losses incurred on the investment, but not endowment fund money. Notwithstanding any other provisions of this section, under no circumstances shall a participant or beneficiary receive a refund or distribution that is more than the fair market value of the specific account on the applicable liquidation date.

**Source:** Laws 2000, LB 1003, § 8; Laws 2001, LB 750, § 4; Laws 2003, LB 574, § 30; Laws 2005, LB 216, § 20.

**85-1809 Ownership rights under participation agreement.**

(1) A participant retains ownership of all contributions made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary. Notwithstanding any other provision of law, any amount credited to any account is not susceptible to any levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement, and the amount is not an asset or property of either the participant or the beneficiary for the purposes of any state insolvency or inheritance tax laws. All income derived from the investment of the contributions made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

(2) If the program created by sections 85-1801 to 85-1814 is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to receive the fair market value of the account established in the program, less any assessed refund penalty.

(3) If the beneficiary graduates from an institution of higher education and a balance remains in the participant's account, any remaining funds may be transferred as allowed by rule or regulation, subject to the provisions of section 529 of the Internal Revenue Code, as well as any other applicable state or federal laws or regulations.

(4) The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

(5) Any amounts which may be paid to any person or persons pursuant to the Nebraska educational savings plan trust but which are not listed in this section are owned by the trust.

(6) A participant may transfer ownership rights to another eligible participant, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with the rules and regulations or with the terms of the participation agreement.

(7) A participant shall not be entitled to utilize any interest in the Nebraska educational savings plan trust as security for a loan.

(8) The Nebraska educational savings plan trust may accept transfers of cash investments from a custodian under the Nebraska Uniform Transfers to Minors Act or any other similar laws under the terms and conditions established by the trustee.

**Source:** Laws 2000, LB 1003, § 9; Laws 2001, LB 750, § 5; Laws 2003, LB 574, § 31.

#### Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

#### **85-1810 Benefits received; effect on other student aid.**

A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to the federal law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Nebraska educational savings plan trust in determining need and eligibility for student aid.

**Source:** Laws 2000, LB 1003, § 10.

#### **85-1811 Annual audit.**

(1) The State Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Nebraska educational savings plan trust by November 1 to the Governor and the Legislature. The State Treasurer shall cause the audit to be made either by the Auditor of Public Accounts or by an independent certified public accountant designated by the State Treasurer, and the audit shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by all of the following information prepared by the State Treasurer:

- (a) Any related studies or evaluations prepared in the preceding year;
- (b) A summary of the benefits provided by the trust, including the number of participants and beneficiaries in the trust; and
- (c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust, including the investment performance of the funds.

**Source:** Laws 2000, LB 1003, § 11.

**85-1812 Benefits received; tax consequences.**

(1) For federal income tax purposes, the Nebraska educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The trust meets the requirements of section 529(b) of the Internal Revenue Code as follows:

- (a) Pursuant to section 85-1806, a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education costs of the designated beneficiary of the account;
- (b) Pursuant to section 85-1806, a maximum contribution level is established;
- (c) Pursuant to section 85-1807, a separate account is established for each beneficiary;
- (d) Pursuant to section 85-1807, contributions may only be made in the form of cash;
- (e) Pursuant to section 85-1807, a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust;
- (f) Pursuant to section 85-1808, penalties are provided on refunds of earnings which are not used for qualified higher education costs of the beneficiary, made on account of the death or disability of the designated beneficiary, or made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code; and
- (g) Pursuant to section 85-1809, a participant shall not pledge any interest in the trust as security for a loan.

(2) State income tax treatment of the Nebraska educational savings plan trust shall be as provided in section 77-2716.

**Source:** Laws 2000, LB 1003, § 12.

**85-1813 Assets of trust; how treated.**

The assets of the Nebraska educational savings plan trust, including the program fund and endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries. No property rights in the trust shall exist in favor of the state. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

**Source:** Laws 2000, LB 1003, § 13.

**85-1814 Sections; how construed.**

Nothing in sections 85-1801 to 85-1813 shall be deemed to prohibit both resident and nonresident participants and designated beneficiaries from being eligible to participate in and benefit from the Nebraska educational savings plan trust and program. It is the intent of the Legislature that funds and income credited to the program fund are fully portable and may be used at any institution of higher education.

**Source:** Laws 2000, LB 1003, § 14.

**ARTICLE 19**  
**NEBRASKA SCHOLARSHIP ACT**

Section	
85-1901.	Act, how cited.
85-1902.	Definitions, where found.
85-1903.	Award, defined.
85-1904.	Award year, defined.
85-1905.	Commission, defined.
85-1906.	Eligible postsecondary educational institution, defined.
85-1907.	Eligible student, defined.
85-1908.	Full-time student and full-time-equivalent student, defined.
85-1909.	Tuition and mandatory fees, defined.
85-1910.	Undergraduate student, defined.
85-1911.	Awards; how made.
85-1912.	Target level of funds; computation.
85-1913.	Eligible postsecondary educational institutions; duties.
85-1914.	Commission; awards; duties.
85-1915.	Award; conditions.
85-1916.	Recipient; remit award balance; when.
85-1917.	Commission; duties; rules and regulations.
85-1918.	Annual report.
85-1919.	Applicability of act.
85-1920.	Nebraska Scholarship Fund; created; use; investment.

**85-1901 Act, how cited.**

Sections 85-1901 to 85-1920 shall be known and may be cited as the Nebraska Scholarship Act.

**Source:** Laws 2003, LB 574, § 1.

**85-1902 Definitions, where found.**

For purposes of the Nebraska Scholarship Act, the definitions found in sections 85-1903 to 85-1910 apply.

**Source:** Laws 2003, LB 574, § 2.

**85-1903 Award, defined.**

Award means a grant of money by the commission to an eligible student for educational expenses. Awards shall not exceed:

(1) For the 2007-08 award year, fifty percent of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln; and

(2) For the 2008-09 award year and each award year thereafter, twenty-five percent of the tuition and mandatory fees for a full-time, resident, undergradu-

ate student for the last completed award year at the University of Nebraska-Lincoln.

**Source:** Laws 2003, LB 574, § 3; Laws 2004, LB 1107, § 1; Laws 2006, LB 962, § 6; Laws 2007, LB342, § 43.

**85-1904 Award year, defined.**

Award year means the period beginning on July 1 through the following June 30.

**Source:** Laws 2003, LB 574, § 4.

**85-1905 Commission, defined.**

Commission means the Coordinating Commission for Postsecondary Education.

**Source:** Laws 2003, LB 574, § 5.

**85-1906 Eligible postsecondary educational institution, defined.**

Eligible postsecondary educational institution means a public or private postsecondary educational institution:

- (1) Located in Nebraska;
- (2) Primarily engaged in the instruction of students;
- (3) Satisfying the provisions of Nebraska law relating to the approval and licensure of schools, colleges, and universities and maintaining accreditation by an accrediting organization recognized by the United States Department of Education;
- (4) Offering courses of instruction in regularly scheduled classes to regularly enrolled undergraduate students who reside in Nebraska and have received high school diplomas or their equivalent; and
- (5) Which has adopted, and has available for inspection, award refund and repayment policies.

**Source:** Laws 2003, LB 574, § 6.

**85-1907 Eligible student, defined.**

Eligible student means an undergraduate student who:

- (1) Is enrolled in an eligible postsecondary educational institution;
- (2) Is eligible to receive a Federal Pell Grant from the United States Department of Education;
- (3) Is a resident student who is domiciled in Nebraska as provided by section 85-502; and
- (4) Complies with all other provisions of the Nebraska Scholarship Act and its rules and regulations.

**Source:** Laws 2003, LB 574, § 7.

**85-1908 Full-time student and full-time-equivalent student, defined.**

§ 85-1908 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Full-time student and full-time-equivalent student have the definitions found in rules and regulations adopted and promulgated pursuant to the Nebraska Scholarship Act.

**Source:** Laws 2003, LB 574, § 8.

**85-1909 Tuition and mandatory fees, defined.**

Tuition and mandatory fees means:

(1) For students who received an award from the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2002-03 award year, the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the eligible postsecondary educational institution; or

(2) For students who did not receive an award from the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2002-03 award year, the lesser of the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the eligible postsecondary educational institution or the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

**Source:** Laws 2003, LB 574, § 9.

**85-1910 Undergraduate student, defined.**

Undergraduate student means an individual who has not earned a first baccalaureate or professional degree and is enrolled in a postsecondary educational program which leads to, or is creditable toward, a first baccalaureate degree, associate degree, certificate, diploma, or equivalent.

**Source:** Laws 2003, LB 574, § 10.

**85-1911 Awards; how made.**

The Nebraska Scholarship Act shall provide for awards made directly to eligible students based on financial need.

**Source:** Laws 2003, LB 574, § 11.

**85-1912 Target level of funds; computation.**

In order to reduce the costs of administering the Nebraska Scholarship Act, the commission shall identify a target level of funds to be distributed to students pursuant to the act at each eligible postsecondary educational institution. The target level of funds shall represent the maximum amount that may be awarded pursuant to the act to eligible students enrolled in such eligible postsecondary educational institution. The target level of funds for each eligible postsecondary educational institution shall be determined as follows:

(1) For award years prior to the 2006-07 award year for eligible postsecondary educational institutions when the student cost for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the eligible postsecondary educational institution was greater than the student cost for tuition and mandatory fees for a full-time, resident,

undergraduate student for the last completed award year at the University of Nebraska-Lincoln:

(a) Determine the number of eligible full-time-equivalent students enrolled at the eligible postsecondary educational institution for the last completed award year;

(b) Determine the number of eligible full-time-equivalent students enrolled at the eligible postsecondary educational institution for the last completed award year who received an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2002-03 award year;

(c) For the 2003-04 award year, multiply the number determined in subdivision (1)(b) of this section by the ratio equal to the number of eligible full-time-equivalent students who received an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for both the 2002-03 award year and the 2001-02 award year at the eligible postsecondary educational institution divided by the number of eligible full-time-equivalent students who received an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2001-02 award year at the eligible postsecondary educational institution;

(d) For the 2004-05 award year, multiply the number determined in subdivision (1)(b) of this section by the ratio equal to the number of eligible full-time-equivalent students who received both an award pursuant to the Nebraska Scholarship Act for the 2003-04 award year and an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2001-02 award year at the eligible postsecondary educational institution divided by the number of eligible full-time-equivalent students who received an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for both the 2002-03 award year and the 2001-02 award year at the eligible postsecondary educational institution;

(e) For the 2005-06 award year, multiply the number determined in subdivision (1)(b) of this section by the ratio equal to the number of eligible full-time-equivalent students who received both an award pursuant to the Nebraska Scholarship Act for the 2004-05 award year and an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2001-02 award year at the eligible postsecondary educational institution divided by the number of eligible full-time-equivalent students enrolled at the eligible postsecondary educational institution who received both an award pursuant to the Nebraska Scholarship Act for the 2003-04 award year and an award pursuant to the Postsecondary Education Award Program Act, the Scholarship Assistance Program Act, or the State Scholarship Award Program Act for the 2001-02 award year at the eligible postsecondary educational institution;

(f) Multiply the difference of the number determined pursuant to subdivision (1)(a) of this section minus the number determined pursuant to subdivision (1)(c), (d), or (e) of this section by the tuition and mandatory fees determined pursuant to subdivision (2) of section 85-1909;

§ 85-1912 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(g) Multiply the number determined pursuant to subdivision (1)(c), (d), or (e) of this section by the tuition and mandatory fees determined pursuant to subdivision (1) of section 85-1909;

(h) Divide the sum of the products derived pursuant to subdivisions (1)(f) and (g) of this section for each eligible postsecondary educational institution by the sum of the products derived pursuant to subdivisions (1)(f) and (g) and (2)(b) of this section for all eligible postsecondary educational institutions; and

(i) Multiply the total of federal and state funds appropriated for purposes of distribution pursuant to the Nebraska Scholarship Act by the ratio derived pursuant to subdivision (1)(h) of this section; and

(2) For award years prior to 2006-07 for eligible postsecondary educational institutions when the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the eligible postsecondary educational institution was less than or equal to the student costs for tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln and for the 2006-07 award year and each award year thereafter for all eligible postsecondary educational institutions:

(a) Determine the number of eligible full-time-equivalent students enrolled at the eligible postsecondary educational institution for the last completed award year;

(b) Multiply the number determined in subdivision (2)(a) of this section by the tuition and mandatory fees as limited pursuant to subdivision (2) of section 85-1909;

(c) Divide the product derived pursuant to subdivision (2)(b) of this section for each eligible postsecondary educational institution by the sum of the products derived pursuant to subdivisions (1)(f) and (g) and (2)(b) of this section for all eligible postsecondary educational institutions; and

(d) Multiply the total of federal and state funds appropriated for purposes of distribution pursuant to the act by the ratio derived pursuant to subdivision (2)(c) of this section.

**Source:** Laws 2003, LB 574, § 12; Laws 2004, LB 1107, § 2.

**85-1913 Eligible postsecondary educational institutions; duties.**

Eligible postsecondary educational institutions, acting as agents of the commission, shall:

(1) Receive and process applications for awards under the Nebraska Scholarship Act;

(2) Determine eligibility of students based on criteria set forth in the act; and

(3) At any time prior to June 1 of each award year, make recommendations as often as necessary to the commission for awards to eligible students, including the name of each eligible student, social security number of each eligible student, and recommended award amount for each eligible student.

**Source:** Laws 2003, LB 574, § 13.

**85-1914 Commission; awards; duties.**

(1) Within thirty days after receiving recommendations pursuant to section 85-1913, the commission shall review the recommended awards for compliance

with the Nebraska Scholarship Act and its rules and regulations and notify each eligible postsecondary educational institution of the approval or disapproval of recommended awards.

(2) The commission shall distribute to each eligible postsecondary educational institution the total award amount approved for eligible students at such institution. The eligible postsecondary educational institution shall act as an agent of the commission to disburse the awards directly to eligible students during the award year.

**Source:** Laws 2003, LB 574, § 14.

**85-1915 Award; conditions.**

An award may be granted to an eligible student for attendance at an eligible postsecondary educational institution if:

(1) The eligible student is accepted for enrollment as follows:

(a) In the case of an eligible student beginning his or her first year in attendance at an eligible postsecondary educational institution, such eligible student has satisfied requirements for admission and has enrolled or indicated an intent to enroll in an eligible postsecondary educational institution; or

(b) In the case of an eligible student enrolled in an eligible postsecondary educational institution following the successful completion of the student's first year in attendance, such eligible student continues to meet the requirements of the Nebraska Scholarship Act and has maintained the minimum standards of performance as required by the eligible postsecondary educational institution in which the eligible student is enrolled;

(2) The eligible student receiving such award certifies that the award will be used only for educational expenses; and

(3) The eligible student has complied with the act and its rules and regulations.

**Source:** Laws 2003, LB 574, § 15.

**85-1916 Recipient; remit award balance; when.**

If an award recipient discontinues attendance before the end of the award year, the award recipient shall remit any award balance allowable to the eligible postsecondary educational institution in accordance with such institution's withdrawal policy. The institution shall remit such award balance to the commission in accordance with such institution's refund policy.

**Source:** Laws 2003, LB 574, § 16.

**85-1917 Commission; duties; rules and regulations.**

(1) The commission shall:

(a) Supervise the issuance of public information concerning the Nebraska Scholarship Act; and

(b) Establish a reasonable and fair appeal procedure for students adversely affected by the actions of the commission or an eligible postsecondary educational institution in the distribution of funds or granting of awards pursuant to the act.

(2) The commission may adopt and promulgate rules and regulations necessary to carry out the act, including such rules and regulations for maintenance

§ 85-1917 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

of fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of funds and to assure that the eligible postsecondary educational institutions, as agents of the commission, have complied with the act. Such rules and regulations shall be developed in cooperation with representatives of eligible postsecondary educational institutions and shall be designed, to the extent consistent with requirements of the act, to minimize the administrative burden on the eligible postsecondary educational institutions and the commission.

**Source:** Laws 2003, LB 574, § 17.

**85-1918 Annual report.**

Each eligible postsecondary educational institution shall file an annual report with the commission. The report shall document that students receiving awards under the Nebraska Scholarship Act have met the eligibility standards and requirements established in the act and rules and regulations. The report shall include an accounting of all state-funded or federally funded student financial aid awarded by the eligible postsecondary educational institution in the previous fiscal year. The report may include other data, including the unmet need as defined by the commission for all Federal-Pell-Grant-eligible students at each eligible postsecondary educational institution.

**Source:** Laws 2003, LB 574, § 18.

**85-1919 Applicability of act.**

The Nebraska Scholarship Act does not grant any authority to the commission to (1) control or influence the policies of any eligible postsecondary educational institution because such institution accepts students who receive awards or (2) require any eligible postsecondary educational institution to enroll any student receiving an award or, once admitted, to continue in such institution any student receiving an award.

**Source:** Laws 2003, LB 574, § 19.

**85-1920 Nebraska Scholarship Fund; created; use; investment.**

The Nebraska Scholarship Fund is created. Money in the fund shall include amounts transferred from the State Lottery Operation Trust Fund pursuant to section 9-812. For fiscal years 2003-04 and 2004-05, two million dollars shall be used to carry out the Nebraska Scholarship Act, and the remainder accruing to the Nebraska Scholarship Fund shall be transferred to the General Fund. For fiscal year 2005-06, two million five hundred thousand dollars shall be used to carry out the Nebraska Scholarship Act, and the remainder accruing to the Nebraska Scholarship Fund shall be transferred to the General Fund. For fiscal year 2006-07 and each fiscal year thereafter, all amounts accruing to the Nebraska Scholarship Fund shall be used to carry out the Nebraska Scholarship Act. Any money in the 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.

**Source:** Laws 2003, LB 574, § 20.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.  
Nebraska State Funds Investment Act, see section 72-1260.

**ARTICLE 20****COMMUNITY SCHOLARSHIP FOUNDATION PROGRAM ACT**

## Section

- 85-2001. Repealed. Laws 2007, LB 192, § 11.
- 85-2002. Repealed. Laws 2007, LB 192, § 11.
- 85-2003. Repealed. Laws 2007, LB 192, § 11.
- 85-2004. Repealed. Laws 2007, LB 192, § 11.
- 85-2005. Repealed. Laws 2007, LB 192, § 11.
- 85-2006. Repealed. Laws 2007, LB 192, § 11.
- 85-2007. Repealed. Laws 2007, LB 192, § 11.
- 85-2008. Repealed. Laws 2007, LB 192, § 11.
- 85-2009. Repealed. Laws 2007, LB 192, § 11.
- 85-2010. Repealed. Laws 2007, LB 192, § 11.

**85-2001 Repealed. Laws 2007, LB 192, § 11.**

**85-2002 Repealed. Laws 2007, LB 192, § 11.**

**85-2003 Repealed. Laws 2007, LB 192, § 11.**

**85-2004 Repealed. Laws 2007, LB 192, § 11.**

**85-2005 Repealed. Laws 2007, LB 192, § 11.**

**85-2006 Repealed. Laws 2007, LB 192, § 11.**

**85-2007 Repealed. Laws 2007, LB 192, § 11.**

**85-2008 Repealed. Laws 2007, LB 192, § 11.**

**85-2009 Repealed. Laws 2007, LB 192, § 11.**

**85-2010 Repealed. Laws 2007, LB 192, § 11.**

**ARTICLE 21****ACCESS COLLEGE EARLY SCHOLARSHIP PROGRAM ACT**

## Section

- 85-2101. Act, how cited.
- 85-2102. Terms, defined.
- 85-2103. Access College Early Scholarship Program established; purpose.
- 85-2104. Student; eligibility.
- 85-2105. Applicant; commission; powers and duties; educational institution receiving payment; report required.
- 85-2106. Report.
- 85-2107. Review of adverse decision.
- 85-2108. Rules and regulations.

**85-2101 Act, how cited.**

Sections 85-2101 to 85-2108 shall be known and may be cited as the Access College Early Scholarship Program Act.

**Source:** Laws 2007, LB192, § 2.

**85-2102 Terms, defined.**

For purposes of the Access College Early Scholarship Program Act:

§ 85-2102 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

(1) Commission means the Coordinating Commission for Postsecondary Education;

(2) Extreme hardship means any event, including fire, illness, accident, or job loss, that has recently resulted in a significant financial difficulty for a student or the student's parent or legal guardian;

(3) Postsecondary educational institution means a two-year or four-year college or university which is a member institution of an accrediting body recognized by the United States Department of Education;

(4) Qualified postsecondary educational institution means a postsecondary educational institution located in Nebraska which has agreed, on a form developed and provided by the commission, to comply with the requirements of the act; and

(5) Student means a student attending a Nebraska high school with a reasonable expectation that such student will meet the residency requirements of section 85-502 upon graduation from a Nebraska high school.

**Source:** Laws 2007, LB192, § 3.

**85-2103 Access College Early Scholarship Program established; purpose.**

The Access College Early Scholarship Program is established. The purpose of the program is to provide financial assistance to low-income students for courses to be taken for credit from a qualified postsecondary educational institution while still enrolled in high school. The program shall be administered by the commission.

**Source:** Laws 2007, LB192, § 4.

**85-2104 Student; eligibility.**

A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

(1) Such student or the student's parent or legal guardian is eligible to receive:

(a) Supplemental Security Income;

(b) Food stamps;

(c) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs;

(d) Aid to families with dependent children; or

(e) Assistance under the Special Supplemental Nutrition Program for Women, Infants, and Children; or

(2) The student or the student's parent or legal guardian has experienced an extreme hardship.

**Source:** Laws 2007, LB192, § 5.

**85-2105 Applicant; commission; powers and duties; educational institution receiving payment; report required.**

(1) An applicant for the Access College Early Scholarship Program shall complete an application form developed and provided by the commission and shall forward the form to his or her guidance counselor. The guidance counsel-

or shall verify the student's eligibility under the Access College Early Scholarship Program Act and shall forward the information to the commission for review within fifteen days following receipt of the form from the student. Notification of tuition and mandatory fees to be accrued by the student shall be provided to the commission by the student, high school, or qualified postsecondary educational institution as determined by the commission.

(2) The commission shall review the application and verify the student's eligibility under the act. The commission shall notify the student and the student's guidance counselor of the verification of eligibility and the estimated award amount in writing within thirty days following receipt of the form from the student's guidance counselor. The scholarship award shall equal the lesser of tuition and mandatory fees accrued by the student after any discounts applicable to such student from the qualified postsecondary educational institution or the tuition and mandatory fees that would have been accrued by the student for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln. The commission shall forward such amount directly to the qualified postsecondary educational institution as payment of such student's tuition and mandatory fees.

(3) The commission shall make such payments in the order the applications are received by the commission until funds are inadequate to fulfill any remaining scholarships.

(4) There is no limit on the number of scholarships a student may receive under the act.

(5) For any student receiving a scholarship pursuant to the act for tuition and mandatory fees, the qualified postsecondary educational institution receiving the payment shall report either the student's grade for the course or the student's failure to complete the course to the commission within thirty days after the end of the course or within one hundred eighty days after receipt of a payment pursuant to the act if the course for which the scholarship was awarded does not have a specified ending date. The commission shall keep the identity of students receiving scholarships confidential, except as necessary to comply with the requirements of the act.

**Source:** Laws 2007, LB192, § 6.

#### **85-2106 Report.**

The commission shall prepare a biennial report on scholarships awarded pursuant to the Access College Early Scholarship Program Act and shall submit the report to the Clerk of the Legislature. The report shall include, but not be limited to, the number and amount of scholarships awarded, the postsecondary educational institutions attended by scholarship recipients, and information regarding the success of scholarship recipients in the courses for which the scholarships were awarded.

**Source:** Laws 2007, LB192, § 7.

#### **85-2107 Review of adverse decision.**

A student or the student's parent or legal guardian may request in writing a review of any adverse decision by requesting such review within twenty days following notice of the adverse decision, addressed to the executive director of

§ 85-2107 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

the commission. The review shall be pursuant to the Administrative Procedure Act.

**Source:** Laws 2007, LB192, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

**85-2108 Rules and regulations.**

The commission may adopt and promulgate rules and regulations to carry out the Access College Early Scholarship Program Act.

**Source:** Laws 2007, LB192, § 9.

**ARTICLE 22**

**COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT**

Section

- 85-2201. Act, how cited.
- 85-2202. Community College Foundation and Equalization Aid Fund; created; use; investment.
- 85-2203. Definitions, where found.
- 85-2204. Average revenue remainder allowance, defined.
- 85-2205. Base growth factor, defined.
- 85-2206. Base revenue need, defined.
- 85-2207. Community college area, defined.
- 85-2208. Equalization aid, defined.
- 85-2209. Formula base revenue, defined.
- 85-2210. Full-time equivalent student, defined.
- 85-2211. Local effort rate, defined.
- 85-2212. Prior year revenue, defined.
- 85-2213. Reimbursable educational unit, defined.
- 85-2214. Repealed. Laws 2008, LB 973, § 10.
- 85-2215. Reimbursable educational unit need.
- 85-2216. Revenue remainder allowance, defined.
- 85-2217. State foundation amount, defined.
- 85-2218. State foundation percentage.
- 85-2219. Repealed. Laws 2008, LB 973, § 10.
- 85-2220. System foundation need, defined.
- 85-2221. Community college area; report data.
- 85-2222. Legislature; appropriate funds; legislative intent; Department of Revenue; Department of Administrative Services; duties.
- 85-2223. Department of Revenue; calculate base revenue need.
- 85-2224. Department of Revenue; calculate local effort rate and formula resources.
- 85-2225. Equalization aid; amount.
- 85-2226. Repealed. Laws 2008, LB 973, § 10.
- 85-2227. Department of Revenue; certify maximum levy.
- 85-2228. Minimum levy aid reduction; applicability.
- 85-2229. Director of Administrative Services; pay warrants; procedure.

**85-2201 Act, how cited.**

Sections 85-2201 to 85-2229 shall be known and may be cited as the Community College Foundation and Equalization Aid Act.

**Source:** Laws 2007, LB 342, § 1.

**85-2202 Community College Foundation and Equalization Aid Fund; created; use; investment.**

The Community College Foundation and Equalization Aid Fund is created. The fund shall be used to provide state aid to community college areas pursuant

**COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT § 85-2209**

to the Community College Foundation and Equalization Aid Act. Any money in the Community College Foundation and Equalization Aid 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.

**Source:** Laws 2007, LB 342, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**85-2203 Definitions, where found.**

For purposes of the Community College Foundation and Equalization Aid Act, the definitions found in sections 85-2204 to 85-2220 apply.

**Source:** Laws 2007, LB 342, § 3.

**85-2204 Average revenue remainder allowance, defined.**

Average revenue remainder allowance means the amount calculated pursuant to subdivision (2)(b) of section 85-2223.

**Source:** Laws 2007, LB342, § 4.

**85-2205 Base growth factor, defined.**

Base growth factor means:

- (1) For the calculation of aid for fiscal year 2008-09, the base limitation described in section 77-3446 minus one-half percent; and
- (2) For the calculation of aid for fiscal year 2009-10 and each fiscal year thereafter, the base limitation described in section 77-3446 plus one-half percent.

**Source:** Laws 2007, LB 342, § 5; Laws 2008, LB973, § 1.  
Effective date July 18, 2008.

**85-2206 Base revenue need, defined.**

Base revenue need means the amount calculated pursuant to section 85-2223.

**Source:** Laws 2007, LB 342, § 6.

**85-2207 Community college area, defined.**

Community college area has the definition found in section 85-1503.

**Source:** Laws 2007, LB 342, § 7.

**85-2208 Equalization aid, defined.**

Equalization aid means the amount calculated pursuant to section 85-2225.

**Source:** Laws 2007, LB 342, § 8.

**85-2209 Formula base revenue, defined.**

Formula base revenue means the base growth factor plus one, times the total prior year revenue for all community college areas.

**Source:** Laws 2007, LB 342, § 9.

**85-2210 Full-time equivalent student, defined.**

Full-time equivalent student has the definition found in section 85-1503.

**Source:** Laws 2007, LB 342, § 10.

**85-2211 Local effort rate, defined.**

Local effort rate means the rate applied for the determination of total formula resources pursuant to section 85-2224.

**Source:** Laws 2007, LB 342, § 11.

**85-2212 Prior year revenue, defined.**

Prior year revenue means (1) the lesser of (a) the total of general fund property taxes levied in the fiscal year immediately preceding the fiscal year for which aid is being calculated or (b) the local effort rate calculated pursuant to section 85-2224 multiplied by the property valuation for each community college area divided by one hundred plus (2) state aid, tuition, and fees reported on the accrual basis of accounting in the fiscal year immediately preceding the fiscal year for which aid is being calculated.

**Source:** Laws 2007, LB 342, § 12; Laws 2008, LB973, § 2.  
Effective date July 18, 2008.

**85-2213 Reimbursable educational unit, defined.**

Reimbursable educational unit has the definition found in section 85-1503.

**Source:** Laws 2007, LB 342, § 13.

**85-2214 Repealed. Laws 2008, LB 973, § 10.**

**85-2215 Reimbursable educational unit need.**

Reimbursable educational unit need equals the amount calculated in subdivision (2)(d) of section 85-2223.

**Source:** Laws 2007, LB 342, § 15.

**85-2216 Revenue remainder allowance, defined.**

Revenue remainder allowance means the amount calculated pursuant to subdivision (2)(e) of section 85-2223.

**Source:** Laws 2007, LB 342, § 16.

**85-2217 State foundation amount, defined.**

State foundation amount means the amount calculated pursuant to subdivision (2)(f) of section 85-2223.

**Source:** Laws 2007, LB 342, § 17.

**85-2218 State foundation percentage.**

State foundation percentage equals thirty percent.

**Source:** Laws 2007, LB 342, § 18.

**85-2219 Repealed. Laws 2008, LB 973, § 10.**

**85-2220 System foundation need, defined.**

**COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT § 85-2222**

System foundation need means the amount calculated pursuant to subdivision (2)(g) of section 85-2223.

**Source:** Laws 2007, LB 342, § 20.

**85-2221 Community college area; report data.**

Each community college area shall annually report such data as necessary to carry out the Community College Foundation and Equalization Aid Act to the Coordinating Commission for Postsecondary Education. Each community college area shall annually provide the commission with a reconciliation of the data necessary to carry out the act with audited financial statement information.

**Source:** Laws 2007, LB 342, § 21; Laws 2008, LB973, § 3.  
Effective date July 18, 2008.

**85-2222 Legislature; appropriate funds; legislative intent; Department of Revenue; Department of Administrative Services; duties.**

(1) The Legislature, in an effort to promote quality postsecondary education and to avoid excessive and disproportionate taxation upon the taxable property of each community college area, may appropriate each biennium from such funds as may be available an amount for aid and assistance to the community colleges. The Legislature recognizes that education, as an investment in human resources, is fundamental to the quality of life and the economic prosperity of Nebraskans and that aid to the community colleges furthers these goals. It is the intent of the Legislature that such appropriations reflect the commitment of the Legislature to join with local governing bodies in a strong and continuing partnership to further advance the quality, responsiveness, access, and equity of Nebraska's community colleges and to foster high standards of performance and service so that every citizen, community, and business will have the opportunity to receive quality educational programs and services regardless of the size, wealth, or geographic location of the community college area or tribally controlled community college as defined in section 85-1503 by which that citizen, community, or business is served. Such funds so appropriated by the Legislature shall be allocated, adjusted, and distributed to the community college boards of governors as provided in the Community College Foundation and Equalization Aid Act.

(2) The Department of Revenue shall certify aid amounts pursuant to the act and report such amounts to the Department of Administrative Services. The Department of Administrative Services shall distribute the total of such appropriated and allocated funds to the boards of governors in ten as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in September of each year.

(3) The Department of Administrative Services shall reduce the amount of the distribution to a board of governors by the amount of funds used by the community college area to provide a program or capital construction project as such term is defined in section 85-1402 which has not been approved or has been disapproved by the Coordinating Commission for Postsecondary Education pursuant to the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1975, LB 344, § 16; Laws 1976, LB 903, § 11; Laws 1977, LB 7, § 1; Laws 1977, LB 459, § 12; Laws 1979, LB 363, § 4;

§ 85-2222 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

Laws 1982, LB 816, § 7; Laws 1984, LB 890, § 2; Laws 1986, LB 258, § 23; Laws 1990, LB 143, § 5; Laws 1991, LB 663, § 48; R.S.Supp.,1992, § 79-2651; Laws 1993, LB 239, § 58; Laws 1995, LB 241, § 2; Laws 1997, LB 269, § 75; Laws 1999, LB 67, § 2; R.S.1943, (1999), § 85-1536; Laws 2007, LB342, § 22.

Cross References

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

**85-2223 Department of Revenue; calculate base revenue need.**

(1) The Department of Revenue shall annually calculate the base revenue need for each community college area as follows:

(a) For fiscal year 2008-09, base revenue need for each community college area shall equal one plus the greater of zero or the average annual percentage growth in full-time equivalent enrollments attributable to each community college area for the most recent three fiscal years times the sum of (i) system foundation need plus (ii) reimbursable educational unit need plus (iii) the revenue remainder allowance for each community college area. The average annual percentage growth shall be calculated by taking the difference between the three-year full-time equivalent enrollment average for the current funding year and the three-year full-time equivalent enrollment average for the prior funding year and dividing by the three-year full-time equivalent enrollment average from the prior funding year; and

(b) For fiscal year 2009-10 and each fiscal year thereafter, base revenue need for each community college area shall equal the greater of ninety-eight percent of the base revenue need calculated in the prior year or one plus the greater of zero or the average annual percentage growth in full-time equivalent enrollments attributable to each community college area times the sum of (i) system foundation need plus (ii) reimbursable educational unit need plus (iii) the average revenue remainder allowance. The average annual percentage growth shall be calculated by taking the difference between the three-year full-time equivalent enrollment average for the current funding year and the three-year full-time equivalent enrollment average for the prior funding year and dividing by the three-year full-time equivalent enrollment average from the prior funding year.

(2) For purposes of the calculation required pursuant to this section:

(a) Average need adjustment shall be calculated for fiscal year 2007-08 aid distribution as follows: Average need adjustment shall equal the sum of average adjusted revenue per full-time equivalent student minus the adjusted revenue per full-time equivalent student times the number of full-time equivalent students attributable to each community college area up to the number of full-time equivalent students attributable to the community college area with the fewest number of full-time equivalent students, except that the amount shall not be less than negative seven hundred fifty thousand or greater than seven hundred fifty thousand. For purposes of the average need adjustment, (i) adjusted revenue per full-time equivalent student equals the sum of the prior year revenue for each community college area minus the system foundation need divided by the number of full-time equivalent students for each community college area and

**COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT § 85-2224**

(ii) average adjusted revenue per full-time equivalent student equals the sum of the prior year revenue for all community college areas minus the system foundation need for all areas divided by the number of full-time equivalent students for all areas;

(b) Average revenue remainder allowance shall equal the average revenue remainder per reimbursable educational unit times the average number of reimbursable educational units for each community college area for the most recent three fiscal years;

(c) Average revenue remainder per reimbursable educational unit equals the revenue remainder allowance for all community college areas divided by the average number of reimbursable educational units in all community college areas for the most recent three fiscal years;

(d) Reimbursable educational unit need for each community college area equals the product of the state foundation amount times forty percent divided by the total reimbursable educational units of all community college areas times the number of reimbursable educational units attributable to each community college area;

(e) Revenue remainder allowance equals the formula base revenue attributable to each community college area minus the sum of system foundation need plus reimbursable educational unit need;

(f) State foundation amount equals formula base revenue times the state foundation percentage;

(g) System foundation need for each community college area equals the product of the state foundation amount times sixty percent divided by the number of community college areas;

(h) Funding year, for purposes of calculating average annual percentage growth, means the fiscal year for which aid is being calculated; and

(i) Three-year full-time equivalent enrollment average for any given funding year equals the sum of the audited full-time equivalent enrollment for the three years preceding the funding year divided by three.

**Source:** Laws 2007, LB342, § 23; Laws 2008, LB973, § 4.  
Effective date July 18, 2008.

**85-2224 Department of Revenue; calculate local effort rate and formula resources.**

(1) The Department of Revenue shall calculate local effort rate by dividing the sum of (a) the total of base revenue need for all community college areas minus (b) the amount appropriated by the Legislature pursuant to the Community College Foundation and Equalization Aid Act minus (c) the total formula tuition and fees for all community college areas by the total taxable valuation from the most recent Certificate of Taxes Levied required under section 77-1613.01 for all community college areas times one hundred.

(2) The department shall calculate the formula resources available to each community college area by adding the yield from local effort rate plus local formula tuition and fees.

(3) For purposes of the calculation required pursuant to this section:

(a) The yield from local effort rate for each community college area equals the local effort rate times the total taxable valuation certified to each communi-

§ 85-2224 UNIVERSITY, COLLEGES, POSTSECONDARY EDUCATION

ty college area pursuant to the most recent Certificate of Taxes Levied required under section 77-1613.01 divided by one hundred; and

(b) Local formula tuition and fees equals tuition and fees attributable to each community college area that were reported on the accrual basis of accounting in the fiscal year prior to the fiscal year for which aid is to be calculated.

**Source:** Laws 2007, LB342, § 24; Laws 2008, LB973, § 5.  
Effective date July 18, 2008.

**85-2225 Equalization aid; amount.**

Equalization aid for each community college area shall equal base revenue need attributable to the community college area minus formula resources attributable to the community college area, except that such amount shall not be less than zero.

**Source:** Laws 2007, LB342, § 25; Laws 2008, LB973, § 6.  
Effective date July 18, 2008.

**85-2226 Repealed. Laws 2008, LB 973, § 10.**

**85-2227 Department of Revenue; certify maximum levy.**

The maximum levy for each community college area shall be certified by the Department of Revenue annually and shall equal one hundred twenty percent of the local effort rate calculated pursuant to section 85-2224 plus amounts allowed pursuant to subsection (2) of section 85-1517.

**Source:** Laws 2007, LB342, § 27; Laws 2008, LB973, § 7.  
Effective date July 18, 2008.

**85-2228 Minimum levy aid reduction; applicability.**

For fiscal year 2008-09 and for each fiscal year thereafter, a minimum levy aid reduction shall apply to any community college area that does not levy at least eighty percent of the local effort rate calculated pursuant to section 85-2224 for the fiscal year immediately preceding the fiscal year for which aid is being calculated.

The minimum levy aid reduction shall equal the difference between the amount of revenue collected by the community college area as a result of its levy and the amount of revenue that would have been collected using eighty percent of the local effort rate in the prior fiscal year. The Department of Revenue shall reduce the amount of aid by an amount equal to the minimum levy aid reduction.

**Source:** Laws 2007, LB342, § 28; Laws 2008, LB973, § 8.  
Effective date July 18, 2008.

**85-2229 Director of Administrative Services; pay warrants; procedure.**

The Director of Administrative Services shall, upon notification by the State Treasurer that sufficient funds are available for payment, draw warrants on vouchers presented by the budget division of the Department of Administrative

**COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT § 85-2229**

Services against funds appropriated and deliver such warrants to the various community colleges.

**Source:** Laws 1975, LB 344, § 18; Laws 1976, LB 903, § 12; R.S.1943, (1987), § 79-2653; Laws 1993, LB 239, § 60; R.S.1943, (1999), § 85-1538; Laws 2007, LB342, § 29.

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of Article VIII, section 1A, of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).



**TELECOMMUNICATIONS AND TECHNOLOGY**

**CHAPTER 86**  
**TELECOMMUNICATIONS AND TECHNOLOGY**

Article.

1. Telecommunications Regulation.
  - (a) General Provisions. 86-101 to 86-121.
  - (b) Regulatory Authority. 86-122 to 86-127.
  - (c) Certification and Permit Requirements. 86-128 to 86-130.
  - (d) Provision of Telecommunication Services. 86-131 to 86-138.
  - (e) Rates and Charges. 86-139 to 86-157.
  - (f) Procedural Requirements. 86-158, 86-159.
  - (g) Penalties. 86-160 to 86-163.
2. Telecommunications Consumer Protection.
  - (a) Telephone Consumer Slamming Prevention Act. 86-201 to 86-211.
  - (b) Telemarketing and Prize Promotions Act. 86-212 to 86-235.
  - (c) Automatic Dialing-Announcing Devices. 86-236 to 86-257.
  - (d) Intrastate Pay-Per-Call Regulation. 86-258 to 86-270.
  - (e) Intercepted Communications. 86-271 to 86-2,115.
  - (f) Prohibited Acts and Services. 86-2,116.
3. Universal Service.
  - (a) Telecommunications Relay System. 86-301 to 86-315.
  - (b) Nebraska Telecommunications Universal Service Fund Act. 86-316 to 86-329.
4. Public Safety Systems.
  - (a) Nebraska Public Safety Communication System Act. 86-401 to 86-419.
  - (b) Emergency Telephone Communications Systems. 86-420 to 86-441.01.
  - (c) Enhanced Wireless 911 Services. 86-442 to 86-470.
5. Public Technology Infrastructure.
  - (a) Information Technology Infrastructure Act. 86-501 to 86-530.
  - (b) Intergovernmental Data Communications Act. 86-531 to 86-549. Repealed.
  - (c) Intergovernmental Data Services Program. 86-550 to 86-568.
  - (d) Geographic Information System. 86-569 to 86-573.
  - (e) Publicly Owned Dark Fiber. 86-574 to 86-578.
  - (f) Internet Enhancement. 86-579, 86-580.
  - (g) County Telephone Systems. 86-581 to 86-592. Repealed.
  - (h) Retail or Wholesale Services. 86-593 to 86-599.
  - (i) Network Nebraska. 86-5,100, 86-5,101.
6. Electronic Information.
  - (a) Telegraph Companies. 86-601 to 86-610.
  - (b) Digital Signature. 86-611.
  - (c) Uniform Electronic Transactions Act. 86-612 to 86-643.
  - (d) Electronic Postmark. 86-644.
7. Telecommunications Rights-of-Way. 86-701 to 86-710.

**Cross References**

**Constitutional provisions:**

Public service companies:

- Capital stock, no increase without permit, see Article X, section 5, Constitution of Nebraska.
- Consolidation, not without permit, see Article X, section 3, Constitution of Nebraska.
- Discrimination, extortion, prohibited, see Article X, section 7, Constitution of Nebraska.
- Dividends, payable only from earnings, see Article X, section 5, Constitution of Nebraska.
- Physical connection, exchange of service, may be required, see Article X, section 3, Constitution of Nebraska.
- Property and franchises, may be taken for public use, see Article X, section 6, Constitution of Nebraska.
- Public Service Commission, powers and duties, see Article IV, section 20, Constitution of Nebraska.
- Report to Public Service Commission, see Article X, section 1, Constitution of Nebraska.
- Special privileges or franchises, Legislature may not grant, see Article III, section 18, Constitution of Nebraska.

**Electric companies**, regulation, see Chapter 70, article 4.

**Electric cooperative corporations**, see Chapter 70, article 7.

**Employment regulations**, laborer's service letter, see sections 48-209 to 48-211.

**Falsification of records or reports**, penalty for, see sections 28-909 and 28-910.

## TELECOMMUNICATIONS AND TECHNOLOGY

- Favors to municipal officers prohibited**, see sections 18-305 to 18-312.  
**Franchise tax on public service companies**, report, see sections 77-801 to 77-804.  
**Industrial disputes**, jurisdiction of Commission of Industrial Relations, see Chapter 48, article 8.  
**Municipal powers of:**  
  Cities of the first class, see sections 16-209, 16-210, 16-224, 16-673, and 16-679.  
  Cities of the metropolitan class, see sections 14-106 to 14-109.  
  Cities of the primary class, see sections 15-222 and 15-266.  
  Cities of the second class and villages, see sections 17-139, 17-140, and 17-528 to 17-528.03.  
**Political contributions prohibited**, when, see section 14-225.  
**Public Service Commission**, jurisdiction and powers, see Chapter 75.  
**Right-of-way for pole lines**, see Chapter 70, article 3.  
**Theft of services**, prohibited, penalty, see sections 28-515 to 28-515.02.  
**Wholesale service to municipalities**, when required, see section 19-708.

### ARTICLE 1

## TELECOMMUNICATIONS REGULATION

#### Cross References

- Drainage district assessments**, see section 31-335.  
**Franchise tax**, report, see sections 77-801 to 77-804.  
**Lines, wires, etc.**, injury to, penalty, see section 28-1311.

#### (a) GENERAL PROVISIONS

- Section  
86-101. Act, how cited.  
86-102. Legislative policy.  
86-103. Definitions, where found.  
86-104. Basic local exchange rate, defined.  
86-105. Basic local exchange service, defined.  
86-106. Business service, defined.  
86-107. Class of subscribers, defined.  
86-108. Commission, defined.  
86-109. Extended area service, defined.  
86-110. Federal act, defined.  
86-111. Interexchange service, defined.  
86-112. Inter-LATA interexchange service, defined.  
86-113. Intra-LATA interexchange service, defined.  
86-114. LATA, defined.  
86-115. Local exchange area, defined.  
86-116. Residence service, defined.  
86-117. Telecommunications, defined.  
86-118. Telecommunications common carrier, defined.  
86-119. Telecommunications company, defined.  
86-120. Telecommunications contract carrier, defined.  
86-121. Telecommunications service, defined.

#### (b) REGULATORY AUTHORITY

- 86-122. Interconnection agreements; administrative fine.  
86-123. Quality and rate regulation.  
86-124. Nonregulated activities.  
86-125. Communications providers; registration; requirements; administrative fine.  
86-126. Regulation of competition.  
86-127. Nebraska Competitive Telephone Marketplace Fund; created; use; investment.

#### (c) CERTIFICATION AND PERMIT REQUIREMENTS

- 86-128. Certificate or permit of convenience and necessity.  
86-129. Certificates or permits for inter-LATA interexchange services.  
86-130. Territorial maps.

#### (d) PROVISION OF TELECOMMUNICATION SERVICES

- 86-131. Trunk and toll line; connection requirements.  
86-132. Trunk and toll lines; consolidation requirements.  
86-133. Exchange abandonment.  
86-134. Discontinuation of service.

## Section

- 86-135. Adjacent exchange; service application.
- 86-136. Adjacent exchange; application approval.
- 86-137. Adjacent exchange; certificate of convenience and necessity.
- 86-138. Adjacent exchange; application denial.

## (e) RATES AND CHARGES

- 86-139. Scope of rate regulation.
- 86-140. Access charge regulation.
- 86-141. Telecommunications companies not subject to regulation; requirements.
- 86-142. Incentives authorized.
- 86-143. Local competition determination.
- 86-144. No local competition; rate list filing requirements.
- 86-145. No local competition; rate review initiated by subscriber complaint.
- 86-146. No local competition; rate review initiated by commission.
- 86-147. No local competition; rate review request by telecommunications company.
- 86-148. No local competition; automatic rate review.
- 86-149. Rate averaging.
- 86-150. Rate deaveraging.
- 86-151. Wholesale rate restrictions.
- 86-152. Flat rates authorized.
- 86-153. Joint service agreements.
- 86-154. Rate change based on tax increases.
- 86-155. Rate change; when effective.
- 86-156. Specific tariffs.
- 86-157. Pro rata billing of local tax.

## (f) PROCEDURAL REQUIREMENTS

- 86-158. Appeals.
- 86-159. Records retention; enforcement.

## (g) PENALTIES

- 86-160. Administrative fine.
- 86-161. Territorial maps; violations; penalty.
- 86-162. Violations; penalty.
- 86-163. Commission; duties.

## (a) GENERAL PROVISIONS

**86-101 Act, how cited.**

Sections 86-101 to 86-163 shall be known and may be cited as the Nebraska Telecommunications Regulation Act.

**Source:** Laws 2002, LB 1105, § 2; Laws 2003, LB 2, § 1.

**86-102 Legislative policy.**

The Legislature declares that it is the policy of the state to:

- (1) Preserve affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Ensure that consumers pay only reasonable charges for telecommunications services;
- (4) Promote diversity in the supply of telecommunications services and products throughout the state; and
- (5) Promote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act.

**Source:** Laws 1986, LB 835, § 1; Laws 1997, LB 660, § 5; R.S.1943, (1999), § 86-801; Laws 2002, LB 1105, § 3.

Sections 86-801 to 86-811 (recodified in 2002 as provisions of the Nebraska Telecommunications Regulatory Act, sections 86-101 to 86-163) apply only to common carriers. Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist., 256 Neb. 479, 590 N.W.2d 840 (1999).

Sections 86-801 to 86-811 (recodified in 2002 as provisions of the Nebraska Telecommunications Regulatory Act, sections 86-101 to 86-163) are constitutional. State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

### **86-103 Definitions, where found.**

For purposes of the Nebraska Telecommunications Regulation Act, unless the context otherwise requires, the definitions found in sections 86-104 to 86-121 apply.

**Source:** Laws 1986, LB 835, § 2; Laws 1993, LB 121, § 554; Laws 1997, LB 660, § 6; Laws 1999, LB 150, § 14; R.S.1943, (1999), § 86-802; Laws 2002, LB 1105, § 4.

### **86-104 Basic local exchange rate, defined.**

Basic local exchange rate means the flat monthly charge for an access line, whether the telecommunications service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service but does not include any charge or tax imposed by or resulting from action by a governmental body which is billed by a telecommunications company to its customers.

**Source:** Laws 2002, LB 1105, § 5.

### **86-105 Basic local exchange service, defined.**

Basic local exchange service means the access and transmission of two-way switched voice communications within a local exchange area.

**Source:** Laws 2002, LB 1105, § 6.

### **86-106 Business service, defined.**

Business service means telecommunications service which is used for occupational, professional, or institutional purposes.

**Source:** Laws 2002, LB 1105, § 7.

### **86-107 Class of subscribers, defined.**

Class of subscribers means a group of customers for which a telecommunications company has established a distinct pricing plan for telecommunications service.

**Source:** Laws 2002, LB 1105, § 8.

### **86-108 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2002, LB 1105, § 9.

### **86-109 Extended area service, defined.**

Extended area service means a telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge.

**Source:** Laws 2002, LB 1105, § 10.

**86-110 Federal act, defined.**

Federal act means the federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, as such acts existed on January 1, 2002.

**Source:** Laws 2002, LB 1105, § 11.

**86-111 Interexchange service, defined.**

Interexchange service means the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are grouped for extended area service.

**Source:** Laws 2002, LB 1105, § 12.

**86-112 Inter-LATA interexchange service, defined.**

Inter-LATA interexchange service means interexchange service originating and terminating in different LATAs.

**Source:** Laws 2002, LB 1105, § 13.

**86-113 Intra-LATA interexchange service, defined.**

Intra-LATA interexchange service means interexchange service originating and terminating within the same LATA.

**Source:** Laws 2002, LB 1105, § 14.

**86-114 LATA, defined.**

LATA means local access and transport area as defined by 47 U.S.C. 153(25), as such section existed on January 1, 2002.

**Source:** Laws 2002, LB 1105, § 15.

**86-115 Local exchange area, defined.**

Local exchange area means a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city or village and its environs as described in maps filed with and approved by the commission.

**Source:** Laws 2002, LB 1105, § 16.

**86-116 Residence service, defined.**

Residence service means telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes.

**Source:** Laws 2002, LB 1105, § 17.

**86-117 Telecommunications, defined.**

Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received.

**Source:** Laws 2002, LB 1105, § 18.

**86-118 Telecommunications common carrier, defined.**

Telecommunications common carrier means a provider of telecommunications service for hire which offers telecommunications service to the general public at large in Nebraska intrastate commerce.

**Source:** Laws 2002, LB 1105, § 19.

**86-119 Telecommunications company, defined.**

Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service in Nebraska intrastate commerce.

**Source:** Laws 2002, LB 1105, § 20.

**86-120 Telecommunications contract carrier, defined.**

Telecommunications contract carrier means a provider of telecommunications service for hire, other than as a common carrier, in Nebraska intrastate commerce.

**Source:** Laws 2002, LB 1105, § 21.

**86-121 Telecommunications service, defined.**

Telecommunications service means the offering of telecommunications for a fee.

**Source:** Laws 2002, LB 1105, § 22.

## (b) REGULATORY AUTHORITY

**86-122 Interconnection agreements; administrative fine.**

(1) The commission shall implement the federal Telecommunications Act of 1996, as such act existed on January 1, 2002, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets.

(2) The commission shall not mandate any arrangement that requires interconnecting telecommunications companies to engage in mutual recovery of costs through offsetting of reciprocal obligations. This subsection shall not prohibit telecommunications companies from entering into voluntary agreements to engage in such an agreement.

(3) In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this section. The authority granted to the commission pursuant to this section shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

**Source:** Laws 2002, LB 1105, § 23.

**86-123 Quality and rate regulation.**

(1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed by an interested party. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.

(3) The Nebraska Telecommunications Regulation Act shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

**Source:** Laws 1986, LB 835, § 9; Laws 1997, LB 660, § 10; R.S.1943, (1999), § 86-809; Laws 2002, LB 1105, § 24; Laws 2003, LB 187, § 26.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **86-124 Nonregulated activities.**

The commission shall not regulate the following:

(1) One-way broadcast or cable television transmission of television or radio signals; and

(2) Mobile radio services, radio paging services, and wireless telecommunications service.

**Source:** Laws 1986, LB 835, § 8; Laws 1997, LB 660, § 9; Laws 2001, LB 389, § 2; R.S.Supp.,2001, § 86-808; Laws 2002, LB 1105, § 25.

#### **86-125 Communications providers; registration; requirements; administrative fine.**

Notwithstanding the provisions of section 86-124:

(1) All communications providers providing service in Nebraska shall file a registration form with and pay a registration fee to the Public Service Commission. A communications provider which provides such service prior to August 1, 2007, and which continues to provide such service on and after August 1, 2007, shall register with the commission no later than January 1, 2008. Any communications provider which begins to provide service in Nebraska on or after August 1, 2007, shall register with the commission prior to providing such service;

(2) The commission shall prescribe the registration form to be filed pursuant to this section. Communications providers as defined in subdivision (8)(a) of this section shall provide:

(a) The name, address, telephone number, and email address of a contact person concerning the Nebraska Telecommunications Universal Service Fund Act and related surcharges, if applicable;

(b) The name, address, telephone number, and email address of a contact person concerning the Telecommunications Relay System Act and related surcharges, if applicable;

(c) The name, address, telephone number, and email address of a contact person concerning the Enhanced Wireless 911 Services Act and related surcharges, if applicable; and

(d) The name, address, telephone number, and email address of a contact person concerning consumer complaints and inquiries;

(3) Communications providers as defined in subdivision (8)(b) of this section shall provide the commission with the name, address, telephone number, and email address of a person with managerial responsibility for Nebraska operations;

(4) The communications provider shall submit a registration fee at the time of submission of the registration form. The commission shall set the fee in an amount sufficient to cover the costs of administering the registration process but not to exceed fifty dollars;

(5) The communications provider shall keep the information required by this section current and shall notify the commission of any changes to such information within sixty days after the change;

(6) The commission may administratively fine pursuant to section 75-156 any communications provider which violates this section;

(7) This section applies to all communications providers providing service in Nebraska except for those communications providers otherwise regulated under the Nebraska Telecommunications Regulation Act; and

(8) For purposes of this section, communications provider means any entity that:

(a) Uses telephone numbers or Internet protocol addresses or their functional equivalents or successors to provide information of a user's choosing by aid of wire, cable, wireless, satellite, or other like connection, whether part of a bundle of services or offered separately, (i) which provides or enables real-time or interactive voice communications and (ii) in which the voice component is the primary function; or

(b) Provides any service, whether part of a bundle of services or offered separately, used for transmission of information of a user's choosing regardless of the transmission medium or technology employed, that connects to a network that permits the end user to engage in electronic communications, including, but not limited to, service provided directly (i) to the public or (ii) to such classes of users as to be effectively available directly to the public.

**Source:** Laws 2002, LB 1211, § 8; Laws 2007, LB661, § 1.

**Cross References**

Enhanced Wireless 911 Services Act, see section 86-442.

Mobile telecommunications service, taxation, see section 77-2703.04.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay System Act, see section 86-301.

**86-126 Regulation of competition.**

Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may revoke any waivers it grants or reinstate regulations if such revocation or reinstatement would protect the public interest upon a finding that the telecommunications company is restricting market output, impairing customer interest, or engaging in unlawful anti-competitive activity.

**Source:** Laws 1986, LB 835, § 7; R.S.1943, (1999), § 86-807; Laws 2002, LB 1105, § 26.

**86-127 Nebraska Competitive Telephone Marketplace Fund; created; use; investment.**

(1) One of the goals of the federal Telecommunications Act of 1996, as such act existed on January 1, 2002, is to foster competition among telephone companies. Section 271 of the federal act (a) establishes specific incentives, procedures, and requirements for regional Bell operating companies to offer inter-LATA interexchange service and (b) requires the Public Service Commission to monitor the competitive performance of a regional Bell operating company and to consult with the Federal Communications Commission regarding such activities.

(2) The Nebraska Competitive Telephone Marketplace Fund is created. The Public Service Commission may accept, and the fund shall consist of, any voluntary performance payments received from a regional Bell operating company. The fund shall be used by the commission for expenses related to the monitoring of compliance with section 271 of the federal act. If money in the fund exceeds thirty thousand dollars, the commission shall remit such excess money to the State Treasurer for credit to the Nebraska Internet Enhancement Fund. Any money in the Nebraska Competitive Telephone Marketplace 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.

**Source:** Laws 2002, LB 1211, § 11; Laws 2008, LB755, § 6.  
Effective date March 20, 2008.

**Cross References**

**Certificates for inter-LATA interexchange services**, see section 86-129.

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

(c) CERTIFICATION AND PERMIT REQUIREMENTS

**86-128 Certificate or permit of convenience and necessity.**

(1)(a) To preserve the integrity of a ubiquitous network, to preserve and advance universal service, and to ensure the delivery of essential and emergency telecommunications service, telecommunications common carriers and telecommunications contract carriers in Nebraska are subject to regulation by the commission. In addition to the requirements of section 86-129, a person shall file an application and receive either a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier before such person may (i) offer any telecommunications

service or (ii) construct new telecommunications facilities in, or extend existing telecommunications facilities into, the territory of another telecommunications company to provide any telecommunications service.

(b) The commission may only issue a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier after due notice and hearing pursuant to commission rules and regulations. The commission shall not issue a certificate or a permit to an agency or political subdivision of the state.

(2) If a telecommunications company holds a certificate of convenience and necessity as a telecommunications common carrier, it shall not be required to obtain a permit as a telecommunications contract carrier.

(3) The commission may establish such just and reasonable classifications of groups of telecommunications common carriers and telecommunications contract carriers taking into consideration the special nature of the telecommunications service performed by such carriers. The commission may adopt and promulgate rules, regulations, and requirements to be observed by a carrier so classified or grouped as the commission deems necessary or desirable and in the public interest.

(4) The commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange service under rules and regulations applicable to all telecommunications companies providing such interexchange service. After such waiver, the certificate or permit for and provision of intra-LATA interexchange service shall be governed by the statutes, rules, and regulations for a certificate or permit for and provision of inter-LATA interexchange service.

**Source:** Laws 1963, c. 425, art. VI, § 4, p. 1418; Laws 1986, LB 835, § 13; Laws 1993, LB 121, § 468; Laws 1997, LB 660, § 3; Laws 1999, LB 150, § 13; Laws 2001, LB 827, § 19; R.S.Supp.,2001, § 75-604; Laws 2002, LB 1105, § 27.

**1. Certificate of convenience and necessity**  
**2. Miscellaneous**

**1. Certificate of convenience and necessity**

The appellant's application seeking authority to operate a mobile telephone service to subscribers was denied by the court. Before granting a certificate of convenience and necessity, the commission must find that the portion of the territory of another telephone company into which the applicant proposes to construct new lines or extend existing lines does not or will not, within a reasonable time, receive reasonably adequate telephone service from the telephone company already serving the territory. In re Application of Best, 209 Neb. 524, 308 N.W.2d 726 (1981).

Under the facts in this case, the Nebraska Public Service Commission had no jurisdiction to order a motel to cease and desist from offering or providing telephone service on its in-house telephone system without first obtaining from it a certificate of public convenience and necessity. Sherdon v. Dann, 193 Neb. 768, 229 N.W.2d 531 (1975).

This section (formerly section 75-604) does not prevent State Railway Commission from authorizing service under 1969 act by telephone company to applicant residing in another telephone company's service area without an application by former company to extend its certificate of public convenience and necessity. Schoen v. American Communication Co., Inc., 189 Neb. 78, 199 N.W.2d 716 (1972).

The territory of a certificated telephone service company cannot be invaded by a mobile telephone service company

unless it first applies for and receives a certificate of public convenience and necessity. Radio-Fone, Inc. v. A.T.S. Mobile Telephone, Inc., 187 Neb. 637, 193 N.W.2d 442 (1972).

The invasion of the territory of a telephone company rendering long distance service by another telephone company is prohibited unless the invading company applies for and receives a certificate of convenience and necessity. Northwestern Bell Tel. Co. v. Consolidated Tel. Co., 180 Neb. 268, 142 N.W.2d 324 (1966).

Before State Railway Commission can issue certificate of convenience and necessity allowing one telephone company to invade the territory of another, it must make specific findings required by this section (formerly section 75-604). Chambers Rural Tel. Co., Inc. v. K. & M. Tel. Co., Inc., 179 Neb. 735, 140 N.W.2d 400 (1966).

The grant of a certificate of convenience and necessity to invade the territory of another company must be on the application of the invading company. Sherdon v. American Communication Co., 178 Neb. 454, 134 N.W.2d 42 (1965).

**2. Miscellaneous**

Subsection (1)(b) of this section is preempted by federal law and is unconstitutional. In re Application of Lincoln Electric System, 265 Neb. 70, 655 N.W.2d 363 (2003).

Sections 75-604 to 75-616 apply only to common carriers. Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist., 256 Neb. 479, 590 N.W.2d 840 (1999).

Where evidence sustains a compliance with this section (formerly section 75-604), and a valid reason for denial is not

shown, railway commission should grant application. Northwestern Bell Tel. Co. v. Pleasant Valley Tel. Co., 181 Neb. 799, 150 N.W.2d 922 (1967).

### **86-129 Certificates or permits for inter-LATA interexchange services.**

(1) The commission may issue a certificate or permit authorizing any telecommunications company which files an application to offer and provide inter-LATA interexchange service. The application shall include such information as required by the rules and regulations of the commission. The commission may as a precondition to issuing a certificate or permit: (a) Require the procurement of a performance bond sufficient to cover amounts due or to become due to other telecommunications companies providing access to the local exchange networks for the applicant and (b) require the procurement of a performance bond sufficient to protect any advances or deposits the telecommunications company may collect from its customers or order that such advances or deposits be held in escrow or trust.

(2) The commission may deny a certificate or permit to any telecommunications company which:

- (a) Does not provide the information required by the commission;
- (b) Fails to provide a performance bond, if required;
- (c) Does not possess adequate financial resources to provide the proposed interexchange service; or
- (d) Does not possess adequate technical competency to provide the proposed interexchange service.

(3) Within thirty days after receiving an application, the commission shall approve a certificate or permit or issue a notice of hearing concerning the application. A hearing is only required to deny an application.

(4) Any telecommunications company or its affiliate that has been authorized by the commission to offer an interexchange service prior to January 1, 1987, shall continue to have such authority. Such telecommunications company or affiliate need not file a new application to provide the interexchange service previously authorized by the commission.

**Source:** Laws 1986, LB 835, § 5; R.S.1943, (1999), § 86-805; Laws 2002, LB 1105, § 28.

### **86-130 Territorial maps.**

(1) Every telecommunications company in Nebraska shall file with the commission (a) maps of the territory in Nebraska in which the telecommunications company offers local exchange telephone service and (b) amended maps to continuously keep current the information shown on such maps.

(2) Rules and regulations of the commission shall include: The style, size, and kind of maps; the information to be shown on such maps; the time and place for filing the maps; and a requirement that the maps be kept current.

(3) The commission may revoke or suspend the certificate of convenience and necessity as a telecommunications common carrier or the permit as a telecom-

munications contract carrier of any telecommunications company who violates this section.

**Source:** Laws 1963, c. 425, art. VI, § 5, p. 1418; Laws 1993, LB 121, § 469; Laws 1994, LB 414, § 100; R.S.1943, (1996), § 75-605; Laws 2002, LB 1105, § 29.

Anyone operating an exchange offering telephone service is required to file a map of the territory in which service is offered. Chambers Rural Tel. Co., Inc. v. K. & M. Tel. Co., Inc., 179 Neb. 735, 140 N.W.2d 400 (1966).

Filing of territorial maps under this section (formerly section 75-605) was made. Sherdon v. American Communication Co., 178 Neb. 454, 134 N.W.2d 42 (1965).

#### (d) PROVISION OF TELECOMMUNICATION SERVICES

##### **86-131 Trunk and toll line; connection requirements.**

Every telecommunications company shall take the calls or messages coming from any other telecommunications company and switch and connect its equipment so that any telephone message from any point in Nebraska may be delivered to any subscriber served by its telephone exchange or switched through and so that any message may be passed on to another exchange over such trunk or toll lines as may be available and designated by the exchange or switching station where the call originated, regardless of the ownership of such lines. Such telecommunications company shall also take calls from its subscribers and public pay stations and pass such calls through its exchange toward destination and over the lines and the route designated by the person making such telephone call if there are competing lines existing between such points. If the person making such telephone call does not designate a route for such message or no competing lines exist between points of origination and destination, the telecommunications company may, by its operator at originating point, make such designation of route, but calls or messages shall be switched through to destination if the point can be reached by any connecting equipment.

**Source:** Laws 1963, c. 425, art. VI, § 7, p. 1419; Laws 1994, LB 414, § 102; R.S.1943, (1996), § 75-607; Laws 2002, LB 1105, § 30.

##### **86-132 Trunk and toll lines; consolidation requirements.**

Whenever any competing telephone plant or exchange has been consolidated with or absorbed by another so that the remaining plant or exchange has a monopoly of or exclusive telephone business of any city or village, the telecommunications company operating the exclusive exchange or plant shall cause all toll or trunk lines formerly terminating in the eliminated exchange to be placed on or connected to its exclusive exchange, shall make and keep such connection in a good and efficient manner, and shall maintain an interchange of business with such trunk or toll lines the same as its own, in a fair and impartial manner, upon the terms set forth in this section and sections 86-131, 86-140, and 86-153. During the period intervening between the time when the first subscribers are taken from the eliminated exchange until the time all have been removed, if such period is more than thirty days, a temporary trunk line shall be established between the two exchanges so that calls may come into both exchanges from the trunk or toll lines of the exchange so absorbed or eliminated and that calls from both exchanges may go out over the lines.

**Source:** Laws 1963, c. 425, art. VI, § 8, p. 1420; Laws 1994, LB 414, § 103; R.S.1943, (1996), § 75-608; Laws 2002, LB 1105, § 31.

**86-133 Exchange abandonment.**

An existing telephone exchange or central office shall not be abandoned or removed to another city or village except by the written consent of at least sixty percent of the subscribers who had rental service contracts with the telecommunications company which seeks to change service six months before an application to change telecommunications service is filed with the commission. The commission shall hold a hearing and issue an order before the change is effected.

**Source:** Laws 1963, c. 425, art. VI, § 11, p. 1421; Laws 1994, LB 414, § 107; R.S.1943, (1996), § 75-611; Laws 2002, LB 1105, § 32.

**86-134 Discontinuation of service.**

No telecommunications company which provides intrastate interexchange service or basic local exchange service may abandon or otherwise discontinue such service in or to a local exchange area which it serves unless:

(1) The commission finds upon application and hearing that one or more other telecommunications companies are furnishing comparable telecommunications service to the subscribers in such local exchange area at the time of abandonment; and

(2) The telecommunications company discontinuing telecommunications service to such local exchange area:

(a) Notifies its subscribers in the local exchange area in writing of the abandonment, which notice shall be sent at least thirty days prior to the effective date of such abandonment;

(b) Refunds any unused prepaid subscription charges or other unused prepaid charges to each customer in the local exchange area prior to the effective date of the abandonment; and

(c) Prior to the effective date of the abandonment, reimburses its customers in the local exchange area for service charges which its customers incur in obtaining substitute service from another telecommunications company or, in lieu thereof, pays other telecommunications companies directly for such service charges on behalf of its customers making changes in their telecommunications service as a result of the abandonment.

**Source:** Laws 1986, LB 835, § 6; Laws 1997, LB 660, § 8; R.S.1943, (1999), § 86-806; Laws 2002, LB 1105, § 33.

**86-135 Adjacent exchange; service application.**

Any person may file an application with the commission to obtain the telecommunications service furnished in the exchange service area adjacent to the territory in which the applicant resides or operates. The commission shall serve upon each telecommunications company directly affected a copy of the application and notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the telecommunications companies involved do not consent to the application.

**Source:** Laws 1969, c. 601, § 1, p. 2457; Laws 1993, LB 121, § 471; Laws 1994, LB 414, § 108; R.S.1943, (1996), § 75-612; Laws 2002, LB 1105, § 34.

Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

An order of the Public Service Commission will be affirmed if it acted within the scope of its authority, if its order is reasonable and not arbitrary, and if there is evidence to support its

findings. In re Application of The Mickow Corp., 210 Neb. 580, 316 N.W.2d 66 (1982).

Intent of statute is to permit users to petition for telephone service outside the exchange of residence. Hartman v. Glenwood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

### **86-136 Adjacent exchange; application approval.**

Upon the completion of the hearing on such an application made pursuant to section 86-135, if a hearing is required, the commission may grant the application, in whole or in part, if the evidence establishes all of the following:

(1) That such applicant is not receiving, and will not within a reasonable time receive, reasonably adequate exchange telephone service from the telecommunications company which furnishes such service in the exchange service area in which the applicant resides or operates. The fact that an applicant is required to pay toll charges for long-distance telephone calls to an exchange service area adjacent to the territory in which the applicant resides or operates shall not be deemed to constitute inadequate exchange telephone service from the telecommunications company which furnishes such service;

(2) The revision of the exchange service area required to grant the application will not create a duplication of facilities, is economically sound, and will not impair the capability of any telecommunications company affected to serve the remaining subscribers in any affected exchanges;

(3) The community of interest in the general territory is such that the public offering of each telecommunications company in its own exchange service area involved should include all the territory in its service area as revised by the commission's order; and

(4) The applicant is willing and will be required to pay such construction and other costs and rates as are fair and equitable and will reimburse the affected telecommunications company for any necessary loss of investment in existing property as determined by the commission.

**Source:** Laws 1969, c. 601, § 2, p. 2457; Laws 1982, LB 229, § 1; Laws 1994, LB 414, § 109; R.S.1943, (1996), § 75-613; Laws 2002, LB 1105, § 35.

Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. Public Service Commission may consider, in determining the adequacy of service the applicant receives, the evidence that toll charges deter others in the applicant's community of interest from calling him. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

A toll charge as contemplated in subsection (1) of this statute (formerly section 75-613) is a charge for a single long-distance call, not a monthly flat fee for service. In re Application of George Farm Co., 233 Neb. 23, 443 N.W.2d 285 (1989).

The determination of what is economically sound under this section (formerly section 75-613) is peculiarly within the discretion and expertise of the Public Service Commission. Where the

evidence is in conflict, the weight of the evidence is for the determination of the commission and not the appellate court. Reis v. Glenwood Telephone Membership Corp., 207 Neb. 575, 299 N.W.2d 771 (1980).

Terminology of this section (formerly section 75-613) has acquired new meanings requiring case-by-case evaluation. Hartman v. Glenwood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

An applicant may obtain authority from the State Railway Commission for telephone service furnished in adjacent service area without proving inadequacy of service or unfairness of rates in the tradition of public utility law. Schoen v. American Communication Co., Inc., 189 Neb. 78, 199 N.W.2d 716 (1972).

### **86-137 Adjacent exchange; certificate of convenience and necessity.**

After the commission has lawfully granted an application pursuant to section 86-136, the telecommunications company ordered to provide the exchange telephone service shall be issued a certificate of convenience and necessity to serve that portion of the territory added to its exchange service area by the commission. The commission shall set the date when the exchange telephone

service granted shall take effect and, in doing so, shall take into consideration any construction or major repair which will be required of the telecommunications company involved.

**Source:** Laws 1969, c. 601, § 3, p. 2458; Laws 1994, LB 414, § 110; R.S.1943, (1996), § 75-614; Laws 2002, LB 1105, § 36.

#### **86-138 Adjacent exchange; application denial.**

When the commission refuses to grant an application made pursuant to section 86-135, no new application for the same exchange telephone service shall be filed or shall be considered by the commission until one year has elapsed after the date of mailing of the commission order.

**Source:** Laws 1969, c. 601, § 4, p. 2458; Laws 1994, LB 414, § 111; R.S.1943, (1996), § 75-615; Laws 2002, LB 1105, § 37.

### (e) RATES AND CHARGES

#### **86-139 Scope of rate regulation.**

Except as provided in the Nebraska Telecommunications Regulation Act, telecommunications companies shall not be subject to rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in sections 75-101 to 75-158.

**Source:** Laws 1986, LB 835, § 3; Laws 1991, LB 286, § 1; Laws 1991, LB 618, § 4; Laws 1997, LB 660, § 7; Laws 2000, LB 1285, § 15; R.S.Supp.,2000, § 86-803; Laws 2002, LB 1105, § 38.

#### **86-140 Access charge regulation.**

(1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within ninety days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(2) Reductions made to access charges pursuant to subsection (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges has been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection (1) of this section are passed on in a manner that

is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.

(3) For purposes of this section, access charges means the charges paid by telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

**Source:** Laws 1963, c. 425, art. VI, § 9, p. 1420; Laws 1982, LB 573, § 1; Laws 1986, LB 835, § 14; Laws 1994, LB 414, § 104; Laws 1999, LB 514, § 2; Laws 2000, LB 1285, § 11; R.S.Supp.,2000, § 75-609; Laws 2002, LB 1105, § 39; Laws 2007, LB661, § 2.

**86-141 Telecommunications companies not subject to regulation; requirements.**

(1) Telecommunications companies which serve less than five percent of the state's subscriber lines in the aggregate statewide shall not be subject to rate regulation by the commission pursuant to sections 86-140 and 86-153 unless (a) the telecommunications company elects by action of its board of directors to be subject to such rate regulation by the commission, (b) the proposed rate increase exceeds thirty percent in any one year, (c) five percent of the subscribers petition the commission to regulate rates pursuant to subsections (2) through (4) of this section, or (d) the commission declares that the telecommunications company shall be subject to rate regulation by the commission pursuant to subsection (5) of this section.

(2) Each such telecommunications company not subject to rate regulation shall, at least ninety days before the effective date of any proposed rate change, notify the commission and each of the telecommunications company's subscribers of the proposed rate change. Notice to the commission shall include a list of the telecommunications company's published subscribers. Notice by the telecommunications company to all subscribers shall be in a form prescribed by the commission, shall be by first-class mail, and shall include a schedule of the proposed rates, the effective date of the rates, and the procedure necessary for the subscribers to petition the commission to determine rates in lieu of the proposed rates.

(3) The subscribers of a telecommunications company not subject to the commission's rate regulation may petition the commission to determine rates in lieu of any rate change proposed by the telecommunications company pursuant to subsection (2) of this section. A petition substantially in compliance with the rules and regulations of the commission shall not be deemed invalid due to minor errors in its form.

(4) If, by the effective date of the telecommunications company's proposed rate change, the commission has received petitions from less than five percent of the subscribers requesting that the commission determine rates, the commission shall certify such fact to the telecommunications company and the telecommunications company's proposed rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed rate change, the commission has received petitions from five percent or more of the subscribers requesting that the commission determine rates, the commission shall notify the telecommunications company that it will determine rates for the telecommunications company in lieu of the telecommunications company's proposed rate change. Rates established by the commission or by a

telecommunications company pursuant to subsections (2) through (4) of this section shall be in force for at least one year.

(5) In addition to the procedure for petition prior to any proposed rate change pursuant to subsections (2) through (4) of this section, the subscribers of a telecommunications company not subject to the commission's rate regulation may at any time petition the commission to declare that the telecommunications company shall be subject to such rate regulation. If the commission determines that at least fifty-one percent of a telecommunications company's subscribers have properly petitioned that the telecommunications company be subject to the commission's rate regulation, the commission shall certify such fact to the telecommunications company and thereafter the telecommunications company shall be subject to rate regulation by the commission until at least fifty-one percent of the telecommunications company's subscribers properly petition that the telecommunications company no longer shall be subject to the commission's rate regulation. This section shall not be construed to exempt any local exchange carrier from regulation of its access charges pursuant to section 86-140.

**Source:** Laws 1982, LB 573, § 2; Laws 1994, LB 414, § 105; Laws 1997, LB 660, § 4; Laws 1999, LB 514, § 3; R.S.Supp.,2000, § 75-609.01; Laws 2002, LB 1105, § 40.

#### **86-142 Incentives authorized.**

A telecommunications company may offer special incentives, discounts, packaged offerings, temporary price waivers, or other promotions and may introduce new telecommunications service and discontinue existing telecommunications service by filing rate lists which shall be effective after ten days' notice to the commission.

**Source:** Laws 2002, LB 1105, § 41.

#### **86-143 Local competition determination.**

(1) In an exchange in which local competition exists, telecommunications companies shall file rate lists for each telecommunications service which shall be effective after ten days' notice to the commission.

(2) Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such exchange or exchanges. Notwithstanding any other provision of the Nebraska Telecommunications Regulation Act, the commission may consider any wireless telecommunications service provided in the exchange or exchanges when determining whether local competition exists.

(3) The notice of the hearing on the telecommunications company's application shall be given once each week for two consecutive weeks in a newspaper of general circulation in the affected area and shall state that a determination of local competition may result in the freeing of the telecommunications company from rate regulation by the commission. The notice of the hearing on the commission's motion shall be sent to the telecommunications company by certified mail, return receipt requested, and notice of such hearing shall be published in a newspaper of general circulation in the exchange area. The

hearing on the commission's motion shall be held no sooner than ten days after the receipt of notice by the telecommunications company.

(4) The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and redetermine the determination after notice and a hearing on the issue.

**Source:** Laws 2002, LB 1105, § 42.

**86-144 No local competition; rate list filing requirements.**

(1) In an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission.

(2) In an exchange in which local competition does not exist, basic local exchange rates may be increased by a telecommunications company only after ninety days' notice to all affected subscribers. Such notice of increase shall include (a) the reasons for the rate increase, (b) a description of the affected telecommunications service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section.

(3) A telecommunications company which proposes to increase its basic local exchange rates shall hold at least one public informational meeting in each public service commissioner district as established by section 75-101.01 in which there is an exchange affected by the proposed rate increase.

**Source:** Laws 2002, LB 1105, § 43.

**86-145 No local competition; rate review initiated by subscriber complaint.**

(1) Basic local exchange rates increased by any telecommunications company pursuant to section 86-144 shall be reviewed by the commission only upon formal complaint. The complaint shall specifically set forth the particular rate as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. The complaint shall be signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty thousand access lines affected by the rate increase, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines affected by the rate increase, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines affected by the rate increase.

(2) If a proper complaint is presented to the commission within ninety days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission (a) shall accept and file the complaint, (b) upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect, and (c) shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable.

(3) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(4) A telecommunications company shall not increase its basic local exchange rates without the approval of the commission for six months from the date the commission enters an order pursuant to subsection (3) of this section. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(5) For purposes of this section, actual cost includes a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

**Source:** Laws 2002, LB 1105, § 44.

**86-146 No local competition; rate review initiated by commission.**

(1) In an exchange in which local competition does not exist, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable.

(2) The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate for providing such telecommunications service below its actual cost as defined in section 86-145, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates as approved at the hearing which may be reimbursed as a credit against billings for future services.

(3) If the commission fails to enter any order within sixty days after the close of the hearing, the rates proposed by the telecommunications company shall be deemed approved for all purposes, including for purposes of appeal.

(4) No telecommunications company may change its basic local exchange rates within ninety days after entry of a final order adjusting such rates pursuant to this section.

**Source:** Laws 2002, LB 1105, § 45.

**86-147 No local competition; rate review request by telecommunications company.**

Notwithstanding the provisions of sections 86-144 to 86-146, a telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the

telecommunications company or a telecommunications company may elect to proceed, if eligible, under section 86-141. Such proceedings shall be governed by sections 75-101 to 75-158, 86-140, 86-141, and 86-153 and shall not be limited by section 86-144. Any rate so set may thereafter be adjusted as provided in sections 86-144 and 86-145, however no telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to this section.

**Source:** Laws 2002, LB 1105, § 46.

**86-148 No local competition; automatic rate review.**

(1) Notwithstanding the procedures governing review of basic local exchange rate increases in sections 86-144 to 86-146, when a telecommunications company files a rate list to increase its basic local exchange rates by more than ten percent within any consecutive twelve-month period, the commission shall conduct only the limited review provided in this section if (a) such increase, when considered together with all other rate changes which the telecommunications company proposes to implement simultaneously with the basic local exchange rate increase, does not increase the telecommunications company's aggregate annual revenue resulting from such rate changes in this state by more than one percent and (b) the basic local exchange rates specified in the rate list do not exceed the telecommunications company's actual cost as defined in section 86-145 of providing basic local exchange service to the affected subscribers.

(2) A telecommunications company filing rate lists in accordance with the procedures provided in this section shall submit to the commission with such filing: (a) Documentation to demonstrate that the combined effect of the proposed rate changes, in the aggregate, will not increase the telecommunications company's annual revenue resulting from such rate changes in this state by more than one percent and (b) if the commission so requires, documentation to demonstrate that the proposed basic local exchange rates do not exceed the telecommunications company's actual cost as defined in section 86-145 of providing basic local exchange service to the affected subscribers.

(3) The commission shall hold a public hearing to receive evidence concerning the basic local exchange rate increase proposed by the telecommunications company. Unless an extension is granted, such hearing shall be held within sixty days after the date on which the rate list providing for such increase was filed with the commission or, if the commission requires further documentation to be filed with the rate list filing, within sixty days after the date of receipt by the telecommunications company of notice for further documentation from the commission. The commission upon its own motion may grant a one-time, thirty-day extension for the hearing date. If the telecommunications company presents evidence at the hearing that such increase is in accordance with this section, not more than sixty days after the close of such hearing the commission shall enter an order approving or disapproving the proposed basic local exchange rate increase and, if approved, the revised basic local exchange rates shall become effective upon the entry of such order.

**Source:** Laws 2002, LB 1105, § 47.

**86-149 Rate averaging.**

In setting rates for interexchange service, telecommunications companies that provide interexchange service shall continue to average their rates for all interexchange service on a statewide basis unless the commission, upon application and hearing, orders otherwise. This section shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange service, nothing in the Nebraska Telecommunications Regulation Act shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

**Source:** Laws 2002, LB 1105, § 48.

#### **86-150 Rate deaveraging.**

No telecommunications company shall be required to deaverage its wholesale basic local exchange rates to reflect the differences in the costs of providing basic local exchange service in the various exchanges that the telecommunications company serves until the retail basic local exchange rates for those exchanges are also deaveraged or until funds are disbursed to such telecommunications company from federal or state universal service or high-cost funds to offset the higher-than-average costs which such telecommunications company incurs in serving high-cost exchanges.

**Source:** Laws 2002, LB 1105, § 49.

#### **86-151 Wholesale rate restrictions.**

A telecommunications company that obtains at wholesale rates basic local exchange service from another telecommunications company that is available at retail to a specific class of subscribers shall not offer such basic local exchange service to a different class of subscribers.

**Source:** Laws 2002, LB 1105, § 50.

#### **86-152 Flat rates authorized.**

The commission may order that flat rate service shall be available whenever measured service is implemented and that for such service the price restrictions prescribed in the Nebraska Telecommunications Regulation Act shall be retained. Measured service means basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of calls, distance of calls, and time of day.

**Source:** Laws 2002, LB 1105, § 51.

#### **86-153 Joint service agreements.**

When two or more telecommunications companies jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the telecommunications companies furnishing such service. In the event of inability to agree, any one of the telecommunications companies jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service.

**Source:** Laws 2002, LB 1105, § 52.

**86-154 Rate change based on tax increases.**

The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days after the filing of the plan or the plan shall be deemed approved.

**Source:** Laws 2002, LB 1105, § 53.

**86-155 Rate change; when effective.**

Applications for commission approval of specific new rates or charges or changes in existing rates or charges for telecommunications service which have not been heard and determined within six months and thirty days from the date the application was filed may be put into effect by the telecommunications company, in an amount not to exceed seventy-five percent of the total amount of the application, subject to refund of any amount collected in excess of the amount which would have been collected under the new or changed rates or charges as finally approved by the commission. The refund shall include an interest payment at a rate of interest determined by the commission, except that the rate of interest shall not exceed the overall rate of return which the telecommunications company is authorized to earn. When making its final determination on the application, the commission shall not consider the rates and charges of the telecommunications company put into effect pending such final determination. This section shall not apply to tariffs placed into effect under section 86-156.

**Source:** Laws 2002, LB 1105, § 54.

Thirty-day limit for Public Service Commission to file decision is discretionary, not mandatory. *Hartman v. Glenwood Tel. Membership Corp.*, 197 Neb. 359, 249 N.W.2d 468 (1977).

**86-156 Specific tariffs.**

Whenever any telecommunications company files a specific tariff for any new equipment, new telecommunications service feature of existing equipment, or rate not previously offered and the commission has not finally determined the tariff within sixty days thereafter, it shall become effective as filed. The tariff shall remain in effect until the commission determines an appropriate interim tariff or finally determines the matter. This section shall not apply to services of a type offered only by regulated telecommunications companies.

**Source:** Laws 1976, LB 768, § 1; Laws 1994, LB 414, § 112; R.S.1943, (1996), § 75-616; Laws 2002, LB 1105, § 55.

**86-157 Pro rata billing of local tax.**

Whenever any municipality or any other local governmental entity imposes upon a telecommunications company any tax or fee as described in section 86-704, such tax or fee shall, insofar as practicable, be billed pro rata to the telecommunications company's customers receiving telecommunications service within the territorial limits of such municipality or other local governmental entity.

**Source:** Laws 1986, LB 835, § 10; R.S.1943, (1999), § 86-810; Laws 2002, LB 1105, § 56.

## (f) PROCEDURAL REQUIREMENTS

**86-158 Appeals.**

(1) Except as otherwise provided in section 86-123, any order of the commission entered pursuant to authority granted in the Nebraska Telecommunications Regulation Act may be appealed by any interested party to the proceeding. The appeal shall be in accordance with the Administrative Procedure Act.

(2) In an original action concerning a violation of the Nebraska Telecommunications Regulation Act by a telecommunications company, the commission shall have jurisdiction as set forth in section 75-132.01. After all administrative remedies before the commission have been exhausted, an appeal may be brought by an interested party to an action. Such appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1986, LB 835, § 11; Laws 1991, LB 732, § 159; Laws 1997, LB 660, § 11; Laws 2000, LB 1285, § 16; R.S.Supp.,2000, § 86-811; Laws 2002, LB 1105, § 57; Laws 2003, LB 187, § 27.

## Cross References

Administrative Procedure Act, see section 84-920.

**86-159 Records retention; enforcement.**

A telecommunications company shall:

- (1) Keep accounts according to commission rules and regulations;
- (2) File financial reports in a form and at times prescribed by the commission;
- (3) File current price lists and service standards prescribed by the commission; and
- (4) Cooperate with commission investigations of customer complaints.

**Source:** Laws 2002, LB 1105, § 58.

## (g) PENALTIES

**86-160 Administrative fine.**

The commission may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Regulation Act.

**Source:** Laws 2000, LB 1285, § 13; R.S.Supp.,2000, § 75-617; Laws 2002, LB 1105, § 59.

**86-161 Territorial maps; violations; penalty.**

Any person who violates section 86-130 is guilty of a Class V misdemeanor. The commission shall enforce such section, and the Attorney General or any county attorney shall, upon request of the commission, assist in the prosecution of any violations of such section.

**Source:** Laws 1963, c. 425, art. VI, § 6, p. 1419; Laws 1993, LB 121, § 470; Laws 1994, LB 414, § 101; Laws 2000, LB 1285, § 10; R.S.Supp.,2000, § 75-606; Laws 2002, LB 1105, § 60.

**86-162 Violations; penalty.**

Any telecommunications company or its agent who fails or neglects to comply with section 86-131, 86-132, 86-140, 86-141, or 86-153 or who violates any of the provisions of such sections is guilty of a Class IV misdemeanor.

**Source:** Laws 1963, c. 425, art. VI, § 10, p. 1421; Laws 1982, LB 573, § 3; Laws 1994, LB 414, § 106; Laws 2000, LB 1285, § 12; R.S.Supp.,2000, § 75-610; Laws 2002, LB 1105, § 61.

**Cross References**

Free or underpriced telephone service furnished to municipal officers, prohibited, see sections 18-305 and 18-312.

**86-163 Commission; duties.**

The commission shall file with the Clerk of the Legislature an annual report on or before September 30 of each year on the status of the Nebraska telecommunications industry. The report may be submitted in electronic format. The report shall:

- (1) Describe the quality of telecommunications service being provided to the citizens of Nebraska;
- (2) Describe the availability of diverse and affordable telecommunications service to all of the people of Nebraska;
- (3) Describe the level of telecommunications service rates;
- (4) Describe the use and continued need for the Nebraska Telecommunications Universal Service Fund;
- (5) Describe the availability and location of 911 service and E-911 service as required by section 86-437;
- (6) Describe the availability and location of wireless 911 service or enhanced wireless 911 service as required by section 86-460;
- (7) Address the need for further legislation to achieve the purposes of the Nebraska Telecommunications Regulation Act; and
- (8) Address the funding level of the Nebraska Competitive Telephone Marketplace Fund and an accounting of commission expenses related to its duties under section 86-127.

**Source:** Laws 1986, LB 835, § 4; Laws 1991, LB 286, § 2; Laws 1997, LB 686, § 12; Laws 2001, LB 389, § 1; Laws 2001, LB 585, § 15; R.S.Supp.,2001, § 86-804; Laws 2002, LB 1105, § 62; Laws 2002, LB 1211, § 12.

**ARTICLE 2**

**TELECOMMUNICATIONS CONSUMER PROTECTION**

**Cross References**

Drainage district assessments, see section 31-335.

Franchise tax, report, see sections 77-801 to 77-804.

Use of party lines, regulation, penalty, see section 28-1309.

(a) TELEPHONE CONSUMER SLAMMING PREVENTION ACT

Section	
86-201.	Act, how cited.
86-202.	Statement of policy.
86-203.	Definitions, where found.
86-204.	Act; applicability.
86-205.	Change in service; requirements.

## TELECOMMUNICATIONS CONSUMER PROTECTION

Section	
86-206.	Change in service; confirmation.
86-207.	Unauthorized change in service; claim procedures.
86-208.	Unauthorized change; corrective action authorized.
86-209.	Violations; penalties; appeal.
86-210.	Rules and regulations.
86-211.	Unauthorized additional services; provider; duties.

### (b) TELEMARKETING AND PRIZE PROMOTIONS ACT

86-212.	Act, how cited.
86-213.	Definitions, where found.
86-214.	Consumer, defined.
86-215.	Consumer goods or services, defined.
86-216.	Consumer telephone call, defined.
86-217.	Prize, defined.
86-218.	Prize promotion, defined.
86-219.	Seller, defined.
86-220.	Solicitor, defined.
86-221.	Sponsor, defined.
86-222.	Unsolicited consumer telephone call, defined.
86-223.	Verifiable retail value, defined.
86-224.	Payment; consumer's express verifiable authorization required.
86-225.	Consumer rights.
86-226.	Restriction on obtaining consumer's payment.
86-227.	Restriction on advance payment.
86-228.	Prize promotions; information required.
86-229.	Solicitor, sponsor, or seller; prohibited acts.
86-230.	Records required.
86-231.	Burden of proof.
86-232.	Act; how construed.
86-233.	Consumer; remedies.
86-234.	Violation; penalty.
86-235.	Violation; civil penalty.

### (c) AUTOMATIC DIALING-ANNOUNCING DEVICES

86-236.	Act, how cited.
86-237.	Definitions, where found.
86-238.	Automatic dialing-announcing device, defined.
86-239.	Commission, defined.
86-240.	Emergency purposes, defined.
86-241.	Established business relationship, defined.
86-242.	Telephone solicitation, defined.
86-243.	Unsolicited advertisement, defined.
86-244.	Telephone solicitations; restrictions.
86-245.	Unsolicited advertisement to telephone facsimile machine; prohibited.
86-246.	Automatic dialing-announcing device; certain use prohibited.
86-247.	Telephone solicitation message; requirements.
86-248.	Telephone solicitation to residential line; limitations.
86-249.	Automatic dialing-announcing device; release of telephone line; requirements.
86-250.	Permit required; procedure; liability; filing required.
86-251.	Sequential dialing prohibited.
86-252.	Commission; adopt rules and regulations.
86-253.	Commission; enforcement.
86-254.	Seizure of automatic dialing-announcing devices; when; destruction; liability.
86-255.	Commission decision; appeal.
86-256.	Automatic dialing-announcing device; registration required; when; message requirements; liability; filing required.
86-257.	Violations; administrative fine.

## TELECOMMUNICATIONS AND TECHNOLOGY

### Section

#### (d) INTRASTATE PAY-PER-CALL REGULATION

- 86-258. Act, how cited.
- 86-259. Definitions, where found.
- 86-260. Commission, defined.
- 86-261. Pay-per-call services, defined.
- 86-262. Common carriers; provide services; terms and conditions.
- 86-263. Rules and regulations regarding preambles.
- 86-264. Common carrier; provide information to consumers.
- 86-265. Option to block nine hundred services; charges; rules and regulations for involuntary blocks.
- 86-266. Common carrier; prohibited acts.
- 86-267. Transmission services; acceptance of charges required.
- 86-268. Transmission services; limitations.
- 86-269. Enforcement; appeal.
- 86-270. Violations; administrative fine.

#### (e) INTERCEPTED COMMUNICATIONS

- 86-271. Definitions, where found.
- 86-272. Aggrieved person, defined.
- 86-273. Aural transfer, defined.
- 86-274. Contents, defined.
- 86-275. Electronic, mechanical, or other device, defined.
- 86-276. Electronic communication, defined.
- 86-277. Electronic communication service, defined.
- 86-278. Electronic communication system, defined.
- 86-279. Electronic storage, defined.
- 86-280. Intercept, defined.
- 86-281. Investigative or law enforcement officer, defined.
- 86-282. Mobile telephone communication, defined.
- 86-283. Oral communication, defined.
- 86-284. Pen register, defined.
- 86-285. Provider, defined.
- 86-286. Readily accessible to the general public, defined.
- 86-287. Trap-and-trace device, defined.
- 86-288. User, defined.
- 86-289. Wire communication, defined.
- 86-290. Unlawful acts; penalty.
- 86-291. Interception; court order.
- 86-292. Interception; privileged use.
- 86-293. Interception; procedure; appeal.
- 86-294. Interception; reports.
- 86-295. Violations; penalty.
- 86-296. Electronic devices; prohibited acts; penalty.
- 86-297. Interception; civil action.
- 86-298. Pen register; trap-and-trace device; restrictions on use; penalty.
- 86-299. Pen register; trap-and-trace device; application for order.
- 86-2,100. Pen register; trap-and-trace device; court order.
- 86-2,101. Pen register; trap-and-trace device; installation.
- 86-2,102. Satellites; prohibited acts; penalty.
- 86-2,103. Mobile tracking device; use.
- 86-2,104. Electronic communication service; unauthorized access; penalty.
- 86-2,105. Electronic communication service; disclosure.
- 86-2,106. Electronic communication service; remote computing service; disclosure; government access.
- 86-2,107. Remote computing service; court order for government access.
- 86-2,108. Electronic communication service; remote computing service; notification requirements.
- 86-2,109. Electronic communication service; remote computing service; reimbursement for costs; when.
- 86-2,110. Electronic communication service; remote computing service; civil action authorized; damages; limitation.

## Section

- 86-2,111. Interception; grand jury procedure.  
 86-2,112. Attorney General or county attorney; discovery.  
 86-2,113. Interception; subpoena.  
 86-2,114. Interception; subpoena; enforcement.  
 86-2,115. Interception; use as evidence.

## (f) PROHIBITED ACTS AND SERVICES

- 86-2,116. Diversion of service; provisions applicable.

## (a) TELEPHONE CONSUMER SLAMMING PREVENTION ACT

**86-201 Act, how cited.**

Sections 86-201 to 86-211 shall be known and may be cited as the Telephone Consumer Slamming Prevention Act.

**Source:** Laws 1999, LB 150, § 1; R.S.1943, (1999), § 86-1901; Laws 2002, LB 1105, § 63.

**86-202 Statement of policy.**

It is the policy of this state to ensure that all subscribers are protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service.

**Source:** Laws 1999, LB 150, § 2; R.S.1943, (1999), § 86-1902; Laws 2002, LB 1105, § 64.

**86-203 Definitions, where found.**

For purposes of the Telephone Consumer Slamming Prevention Act, the definitions found in the Nebraska Telecommunications Regulation Act apply.

**Source:** Laws 1999, LB 150, § 3; R.S.1943, (1999), § 86-1903; Laws 2002, LB 1105, § 65.

## Cross References

Nebraska Telecommunications Regulation Act, see section 86-101.

**86-204 Act; applicability.**

Except as provided in section 86-124, the Telephone Consumer Slamming Prevention Act shall apply to all telecommunications companies providing basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications service to subscribers in this state.

**Source:** Laws 1999, LB 150, § 4; R.S.1943, (1999), § 86-1904; Laws 2002, LB 1105, § 66.

**86-205 Change in service; requirements.**

(1)(a) Except as provided in subsection (2) of this section, no telecommunications company shall submit on behalf of a subscriber a change of the subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service without:

- (i) Written change authorization from the subscriber;
- (ii) Toll-free electronic authorization placed from the telephone number which is the subject of the change of service order; or

(iii) Oral authorization obtained by an independent third party.

(b) A separate and distinct authorization shall be required to submit a change of service order for any or all of the following telecommunications services provided to subscribers in this state: Basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, or any other telecommunications service.

(2) The requirements of this section shall not apply to a change of a subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service that results from any merger or sale of exchanges or transfer of authority approved by the commission.

**Source:** Laws 1999, LB 150, § 5; Laws 2001, LB 389, § 5; R.S.Supp.,2001, § 86-1905; Laws 2002, LB 1105, § 67.

#### **86-206 Change in service; confirmation.**

Within thirty days after a subscriber changes his or her authorized provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service, the new authorized service provider shall provide to such subscriber written confirmation of such change of service. The written confirmation shall (1) describe clearly and simply the nature of the change of service, (2) not be a part of, or attached to, any other document, (3) not contain any promotion, offer, or inducement, and (4) be mailed to the subscriber's billing address.

**Source:** Laws 1999, LB 150, § 6; R.S.1943, (1999), § 86-1906; Laws 2002, LB 1105, § 68.

#### **86-207 Unauthorized change in service; claim procedures.**

(1) Nothing in the Telephone Consumer Slamming Prevention Act shall preclude a subscriber from electing to resolve an unauthorized change of service directly with the unauthorized telecommunications company. If the subscriber is unsatisfied with the resolution from the unauthorized telecommunications company, the subscriber may file a complaint with the commission. The complaint may be made by letter, fax, on-line notification, or telephone call to the commission. The subscriber may be required to provide a copy of the subscriber's telephone bill that contains the alleged unauthorized telecommunications company's charges.

(2) The commission, consistent with federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002, shall adopt and promulgate rules and regulations necessary for resolution of subscriber complaints of an unauthorized change of service.

**Source:** Laws 1999, LB 150, § 7; Laws 2001, LB 389, § 6; R.S.Supp.,2001, § 86-1907; Laws 2002, LB 1105, § 69.

#### **86-208 Unauthorized change; corrective action authorized.**

If the commission finds that a telecommunications company has violated section 86-205, the commission shall order the telecommunications company to take corrective action as necessary and consistent with 47 C.F.R. 64.1150, as

such regulation existed on January 1, 2002, and rules and regulations adopted and promulgated by the commission.

**Source:** Laws 1999, LB 150, § 8; Laws 2001, LB 389, § 7; R.S.Supp.,2001, § 86-1908; Laws 2002, LB 1105, § 70.

**86-209 Violations; penalties; appeal.**

(1) Notwithstanding section 75-156, the commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

- (a) The nature, circumstances, extent, and gravity of a prohibited act;
- (b) The history of previous violations;
- (c) The amount necessary to deter future violations; and
- (d) Any efforts to correct the violation.

(3) The commission shall remit any administrative penalty collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) Any administrative penalty may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1999, LB 150, § 9; Laws 2000, LB 1285, § 24; Laws 2001, LB 389, § 8; R.S.Supp.,2001, § 86-1909; Laws 2002, LB 1105, § 71; Laws 2008, LB755, § 7.  
Effective date March 20, 2008.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**86-210 Rules and regulations.**

The commission shall adopt and promulgate competitively neutral rules and regulations necessary to implement the Telephone Consumer Slamming Prevention Act, including rules and regulations that:

(1) Ensure that subscribers are protected from deceptive practices in the obtaining of authorizations and verifications required by section 86-205;

(2) Are applicable to all basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications service provided by telecommunications companies in this state;

(3) Maintain records, provide procedures, and establish performance standards for telecommunications companies with respect to changes of an authorized telecommunications company pursuant to the act;

(4) Establish and administer a slamming complaint system for subscribers of telecommunications service and enforce the provisions of the act; and

(5) Are consistent with 47 C.F.R. 64.1100, 64.1120, 64.1130, and 64.1190, as such regulations existed on January 1, 2002, for the selection of telecommunications companies. The Public Service Commission may adopt and promulgate rules and regulations consistent with the federal regulations for changing long

distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

**Source:** Laws 1999, LB 150, § 10; R.S.1943, (1999), § 86-1910; Laws 2002, LB 1105, § 72.

**86-211 Unauthorized additional services; provider; duties.**

(1) No telecommunications company shall initiate or bill additional telecommunications services not required by the commission to be offered and for which the subscriber did not explicitly request or subscribe. The providing telecommunications company shall initiate a refund of a charge or apply the charge as a credit to the subscriber's next monthly bill if (a) a charge is assessed on a per-use basis for a telecommunications service described in this subsection and (b) the subscriber notifies the providing telecommunications company that the subscriber did not utilize the telecommunications service or the subscriber did not authorize the utilization of the telecommunications service.

(2) If a providing telecommunications company receives a notification pursuant to subdivision (1)(b) of this section, the telecommunications company shall inform the subscriber of the ability to block the telecommunications service from future use by the subscriber and shall block the telecommunications service from future use by the subscriber if the subscriber so requests. If a subscriber requests that the company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of the telecommunications service. The company shall not charge a recurring fee for blocking the telecommunications service.

**Source:** Laws 1999, LB 150, § 11; R.S.1943, (1999), § 86-1911; Laws 2002, LB 1105, § 73.

(b) TELEMARKETING AND PRIZE PROMOTIONS ACT

**86-212 Act, how cited.**

Sections 86-212 to 86-235 shall be known and may be cited as the Telemarketing and Prize Promotions Act.

**Source:** Laws 1999, LB 469, § 1; Laws 2001, LB 165, § 1; R.S.Supp.,2001, § 86-2001; Laws 2002, LB 1105, § 74.

**86-213 Definitions, where found.**

For purposes of the Telemarketing and Prize Promotions Act, the definitions found in sections 86-214 to 86-223 apply.

**Source:** Laws 1999, LB 469, § 2; R.S.1943, (1999), § 86-2002; Laws 2002, LB 1105, § 75.

**86-214 Consumer, defined.**

Consumer means an actual or prospective purchaser, lessee, or recipient of consumer goods or services bought primarily for use for personal, family, or household purposes.

**Source:** Laws 2002, LB 1105, § 76.

**86-215 Consumer goods or services, defined.**

Consumer goods or services means any tangible personal property, merchandise, or services normally used for personal, family, or household purposes and not for resale or for use or consumption in trade or business.

**Source:** Laws 2002, LB 1105, § 77.

**86-216 Consumer telephone call, defined.**

Consumer telephone call means a telephone call made by a seller for the purpose of soliciting a sale of any consumer goods or services to the person called, for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes.

**Source:** Laws 2002, LB 1105, § 78.

**86-217 Prize, defined.**

Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. Prize does not include an item offered in a promotion for a book, recording, video, multimedia, or similar club in compliance with 16 C.F.R. part 425, as such regulations existed on January 1, 2002, or a continuity plan or single sale of merchandise or service where there is no minimum purchase required.

**Source:** Laws 2002, LB 1105, § 79.

**86-218 Prize promotion, defined.**

Prize promotion means (1) a sweepstakes or other game of chance or (2) an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

**Source:** Laws 2002, LB 1105, § 80.

**86-219 Seller, defined.**

Seller means any person or organization who individually or through salespersons initiates unsolicited consumer telephone calls in order to (1) sell, lease, or rent consumer goods or services, (2) offer gifts or prizes with the intent to sell, lease, or rent consumer goods or services, or (3) represent to a consumer that the consumer has won or will receive a prize by telephonic means or by written notice sent through the mail in which the goods and services and all the material terms of the transaction are not fully described and which require that the consumer contact the seller by telephone to learn about or initiate the transaction. Seller does not include a telecommunications company as defined in section 86-119 when the telecommunications company is offering telecommunications service of any kind which are subject to the verification provisions of (i) the Telephone Consumer Slamming Prevention Act or (ii) the federal regulations for changing long distance service under subpart K of 47 C.F.R. part 64, as such regulations existed on January 1, 2002.

**Source:** Laws 2002, LB 1105, § 81.

**Cross References**

Telephone Consumer Slamming Prevention Act, see section 86-201.

**86-220 Solicitor, defined.**

Solicitor means any person, who is not the seller offering a prize promotion, who represents to an individual that the individual has won or will receive a prize.

**Source:** Laws 2002, LB 1105, § 82.

**86-221 Sponsor, defined.**

Sponsor means any person on whose behalf a solicitor gives a prize but who is not the seller offering a prize promotion.

**Source:** Laws 2002, LB 1105, § 83.

**86-222 Unsolicited consumer telephone call, defined.**

Unsolicited consumer telephone call means a consumer telephone call other than a call made:

- (1) In response to an express request of the person called;
- (2) Primarily in connection with an existing debt or contract, for which payment or performance has not been completed at the time of such a call;
- (3) To any person with whom the seller has a clearly established business relationship; or
- (4) By a magazine or newspaper publisher or such publisher's agent or employee in connection with such publisher's business.

**Source:** Laws 2002, LB 1105, § 84.

**86-223 Verifiable retail value, defined.**

Verifiable retail value means the price (1) at which the solicitor or sponsor can demonstrate that a substantial number of prizes have been sold within the prior twelve months by a person other than the solicitor in the trade area in which the prize notice is given or (2) no more than one and one-half times the amount the solicitor or sponsor paid for the prize.

**Source:** Laws 2002, LB 1105, § 85.

**86-224 Payment; consumer's express verifiable authorization required.**

A seller may not obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a consumer's checking, savings, share, or similar account, without that consumer's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

- (1) Express written authorization by the consumer, which may include the consumer's signature on the negotiable instrument;
- (2) Express oral authorization which is tape recorded and made available upon request to the consumer's financial institution or to the consumer and which evidences clearly both the consumer's authorization of payment for the goods and services that are the subject of the sales offer and the consumer's receipt of all of the following information:
  - (a) The date of the check, draft, or other form of negotiable paper;
  - (b) The amount of the check, draft, or other form of negotiable paper;
  - (c) The payor's name;

- (d) The number of check, draft, or negotiable paper payments, if more than one;
  - (e) A telephone number for consumer inquiry that is answered during normal business hours; and
  - (f) The date of the consumer's oral authorization; or
- (3) Written confirmation of the transaction, sent to the consumer prior to submission for payment of the consumer's check, draft, or other form of negotiable paper that includes:
- (a) All of the information contained in subdivision (2) of this section; and
  - (b) The procedures by which the consumer can obtain a refund from the seller in the event the confirmation is inaccurate.

**Source:** Laws 1999, LB 469, § 3; R.S.1943, (1999), § 86-2003; Laws 2002, LB 1105, § 86.

#### **86-225 Consumer rights.**

- (1) In addition to any other right to revoke an offer:
- (a) The consumer obligated for any part of the purchase price may cancel the telephone sale until midnight of the fifth business day after the day on which the consumer has received written notice from the seller notifying the consumer of his or her right to cancel the telephone sale. Written notice shall include all of the information included in subdivision (2) of section 86-224 and the procedures by which a consumer may obtain a refund; and
  - (b) The seller shall disclose the refund policy to the consumer orally by telephone, in writing with advertising or promotional material, or with delivery of the products or services, and shall issue a refund within thirty days after the date on which the seller receives returned merchandise or notice of cancellation. A seller who discloses in writing that a sale is made or provided "satisfaction guaranteed", "with free inspection", "no-risk guarantee", or similar words or phrases shall be deemed to meet the requirements of the review and return for refund policy.
- (2) Subdivision (1)(a) of this section does not apply to a sale in which the seller at a minimum has a policy of giving the consumer the right to review goods or services for a period of at least seven days after the date of delivery, accepting returns or canceling services, and providing a refund for the return of its unused and undamaged merchandise or canceled services.

**Source:** Laws 1999, LB 469, § 4; R.S.1943, (1999), § 86-2004; Laws 2002, LB 1105, § 87.

#### **86-226 Restriction on obtaining consumer's payment.**

It is unlawful for a seller to procure the services of any third-party delivery, courier, or other pickup service to obtain a consumer's payment for goods, unless the goods are delivered and can be inspected.

**Source:** Laws 1999, LB 469, § 5; R.S.1943, (1999), § 86-2005; Laws 2002, LB 1105, § 88.

#### **86-227 Restriction on advance payment.**

It is unlawful for a seller to request or receive payment or other consideration, in advance, from a consumer to recover or otherwise aid in the return of

money or any other item lost by the consumer in a prior telemarketing transaction. This section does not apply to services provided to a consumer by an attorney licensed to practice law.

**Source:** Laws 1999, LB 469, § 6; R.S.1943, (1999), § 86-2006; Laws 2002, LB 1105, § 89.

**86-228 Prize promotions; information required.**

In the case of prize promotions, it is unlawful for a seller to fail to provide the following information:

- (1) The odds of winning or receiving the prize and, if the odds are not calculable in advance, the factors used in calculating the odds;
- (2) That no purchase and no payment is necessary to win;
- (3) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;
- (4) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;
- (5) The true name and address of the solicitor, sponsor, or seller offering a prize when the consumer is told he or she has won or will receive a prize; and
- (6) The verifiable retail value of each prize the consumer is told he or she has won or will receive.

**Source:** Laws 1999, LB 469, § 7; R.S.1943, (1999), § 86-2007; Laws 2002, LB 1105, § 90.

**86-229 Solicitor, sponsor, or seller; prohibited acts.**

A solicitor, sponsor, or seller shall not:

- (1) Misrepresent the source of any written prize notice;
- (2) Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has won or will receive a particular prize unless that representation is true;
- (3) Misrepresent the value of a prize; or
- (4) Request or accept any payment, or create an impression that any payment is required, from an individual prior to the receipt of a written prize notice by such individual if the solicitor, sponsor, or seller represents to such individual that he or she has won or will receive a prize. A written prize notice under this subdivision shall contain all the information required in section 86-228.

**Source:** Laws 1999, LB 469, § 8; Laws 2001, LB 165, § 2; R.S.Supp.,2001, § 86-2008; Laws 2002, LB 1105, § 91.

**86-230 Records required.**

Sellers shall maintain records for twenty-four months in compliance with 16 C.F.R. 310.5, as such regulation existed on January 1, 2002.

**Source:** Laws 1999, LB 469, § 9; R.S.1943, (1999), § 86-2009; Laws 2002, LB 1105, § 92.

**86-231 Burden of proof.**

In any civil proceeding alleging a violation of the Telemarketing and Prize Promotions Act, the burden of proving an exemption from the act or an exemption from a definition in the act is upon the person claiming it. In any criminal proceeding alleging a violation of the act, the burden of producing evidence pertaining to a definition or an exemption is upon the person claiming it.

**Source:** Laws 1999, LB 469, § 10; R.S.1943, (1999), § 86-2010; Laws 2002, LB 1105, § 93.

**86-232 Act; how construed.**

The Telemarketing and Prize Promotions Act shall not be construed to limit the remedies available to consumers, the Attorney General, or any county attorney under the Uniform Deceptive Trade Practices Act or any other state or federal law.

**Source:** Laws 1999, LB 469, § 11; R.S.1943, (1999), § 86-2011; Laws 2002, LB 1105, § 94.

**Cross References**

**Uniform Deceptive Trade Practices Act**, see section 87-306.

**86-233 Consumer; remedies.**

Any consumer that suffers a loss or harm as a result of a violation of the Telemarketing and Prize Promotions Act may recover actual damages, attorney's fees, court costs, and any other remedies provided by law. The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of the act, may seek actual damages or other remedies provided by law.

**Source:** Laws 1999, LB 469, § 12; R.S.1943, (1999), § 86-2012; Laws 2002, LB 1105, § 95.

**86-234 Violation; penalty.**

A violation of the Telemarketing and Prize Promotions Act is a Class I misdemeanor.

**Source:** Laws 1999, LB 469, § 13; R.S.1943, (1999), § 86-2013; Laws 2002, LB 1105, § 96.

**86-235 Violation; civil penalty.**

Any person who violates the Telemarketing and Prize Promotions Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action.

**Source:** Laws 2001, LB 165, § 3; R.S.Supp.,2001, § 86-2014; Laws 2002, LB 1105, § 97.

(c) AUTOMATIC DIALING-ANNOUNCING DEVICES

**86-236 Act, how cited.**

Sections 86-236 to 86-257 shall be known and may be cited as the Automatic Dialing-Announcing Devices Act.

**Source:** Laws 2002, LB 1105, § 98.

**86-237 Definitions, where found.**

For purposes of the Automatic Dialing-Announcing Devices Act, the definitions found in sections 86-238 to 86-243 apply.

**Source:** Laws 1993, LB 305, § 1; R.S.1943, (1999), § 86-1201; Laws 2002, LB 1105, § 99.

**86-238 Automatic dialing-announcing device, defined.**

Automatic dialing-announcing device means a device which selects and dials telephone numbers and automatically plays a recorded message.

**Source:** Laws 1993, LB 305, § 2; R.S.1943, (1999), § 86-1202; Laws 2002, LB 1105, § 100.

**86-239 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 1993, LB 305, § 3; R.S.1943, (1999), § 86-1203; Laws 2002, LB 1105, § 101.

**86-240 Emergency purposes, defined.**

Emergency purposes means any situation affecting the health and safety of a consumer.

**Source:** Laws 1993, LB 305, § 4; R.S.1943, (1999), § 86-1204; Laws 2002, LB 1105, § 102.

**86-241 Established business relationship, defined.**

Established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party.

**Source:** Laws 1993, LB 305, § 5; R.S.1943, (1999), § 86-1205; Laws 2002, LB 1105, § 103.

**86-242 Telephone solicitation, defined.**

(1) Telephone solicitation means a telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which call or message is transmitted to any person.

(2) Telephone solicitation does not include a call or message (a) made to any person with the person's prior express invitation or permission, (b) made to any person with whom the caller has an established business relationship, (c) made by a tax-exempt nonprofit organization, (d) not made for commercial purposes, (e) made for a commercial purpose but which does not include the transmission of an unsolicited advertisement, or (f) placed by a live operator and a prerecorded message is not utilized.

**Source:** Laws 1993, LB 305, § 6; R.S.1943, (1999), § 86-1206; Laws 2002, LB 1105, § 104; Laws 2008, LB720, § 2.  
Operative date January 1, 2009.

**86-243 Unsolicited advertisement, defined.**

Unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

**Source:** Laws 1993, LB 305, § 7; R.S.1943, (1999), § 86-1207; Laws 2002, LB 1105, § 105.

**86-244 Telephone solicitations; restrictions.**

A person shall not initiate a telephone solicitation, other than a call made for emergency purposes, using an automatic dialing-announcing device to: (1) An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency; (2) the telephone line of any guest room or patient room of a hospital, health care facility, nursing home, or similar facility; (3) any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person called is charged for the call; or (4) a residential or business telephone line unless the telephone solicitation is otherwise permitted by the Automatic Dialing-Announcing Devices Act.

**Source:** Laws 1993, LB 305, § 8; R.S.1943, (1999), § 86-1208; Laws 2002, LB 1105, § 106.

**86-245 Unsolicited advertisement to telephone facsimile machine; prohibited.**

A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

**Source:** Laws 1993, LB 305, § 9; R.S.1943, (1999), § 86-1209; Laws 2002, LB 1105, § 107.

**86-246 Automatic dialing-announcing device; certain use prohibited.**

A person shall not use an automatic dialing-announcing device in such a way that two or more telephone lines of a business with a multiline telephone system are engaged simultaneously.

**Source:** Laws 1993, LB 305, § 10; R.S.1943, (1999), § 86-1210; Laws 2002, LB 1105, § 108.

**86-247 Telephone solicitation message; requirements.**

All telephone solicitation messages transmitted by an automatic dialing-announcing device shall:

- (1) At the beginning of the message, state clearly the identity of the person making the call; and
- (2) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of such person.

**Source:** Laws 1993, LB 305, § 11; R.S.1943, (1999), § 86-1211; Laws 2002, LB 1105, § 109; Laws 2008, LB720, § 3.  
Operative date January 1, 2009.

**86-248 Telephone solicitation to residential line; limitations.**

(1) A person shall not make a telephone solicitation using an automatic dialing-announcing device to a residential telephone line (a) before 8 a.m. or after 9 p.m. at the location of the person called and (b) unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.

(2) The procedures instituted pursuant to subdivision (1)(b) of this section shall meet the following minimum standards:

(a) A written policy, available upon demand, for maintaining a do-not-call list must be established;

(b) Personnel engaged in any aspect of telephone solicitation must be informed of the existence of and trained in the use of the do-not-call list;

(c) If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation is made, the person on whose behalf the solicitation is made shall be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation is made or an affiliated entity;

(d) A person making a telephone solicitation shall provide the person called with the identity of the person making the call and a telephone number, other than that of the device which placed the call, or address at which the person may be contacted;

(e) In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised; and

(f) A person making telephone solicitations shall maintain a do-not-call list for the purpose of any future telephone solicitations.

**Source:** Laws 1993, LB 305, § 12; R.S.1943, (1999), § 86-1212; Laws 2002, LB 1105, § 110.

**86-249 Automatic dialing-announcing device; release of telephone line; requirements.**

An automatic dialing-announcing device delivering a recorded message to a person shall release the telephone line of the person called within five seconds of the time notification is transmitted to the device that the person called has hung up, or as soon thereafter as the serving telephone company's central office

equipment permits, to allow the telephone line of the person called to be used to make or receive other calls.

**Source:** Laws 1993, LB 305, § 13; R.S.1943, (1999), § 86-1213; Laws 2002, LB 1105, § 111.

**86-250 Permit required; procedure; liability; filing required.**

(1) A person shall not connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line unless the person has a current permit from the commission for the device. An applicant for a permit shall make a written application to the commission. The application shall be in a form prescribed by the commission and shall require information about the type of device proposed for connection and operation, the time of day telephone solicitations will be made using the device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, or such alternative or additional information as the commission may require. If the applicant is an individual, the application shall include the applicant's social security number. The applicant shall remit a fee of five hundred dollars for each device with the application.

(2) Upon receiving an application for a permit, the commission may grant, grant as modified, or deny the application. The commission may modify or deny the permit if the commission determines that (a) the applicant is unwilling or unable to meet the requirements placed on such operations by law, rule, or regulation or has failed to comply with the requirements in the past, (b) the connection or operation of the device will result in a significant decline in the quality of service or access to service for other telephone users, (c) the applicant's equipment is unable to meet the requirements of law, rule, or regulation, or (d) the application does not contain adequate information.

(3) If a permit is granted, the permit shall remain in force for two years from the date of issuance, and each application for the renewal of a permit shall be treated as a new application.

(4) After receiving a permit but prior to connecting or operating an automatic dialing-announcing device on any telephone line, the permitholder shall notify the telephone company of the telephone line on which the device is proposed to be connected or operated. The telephone line shall be considered a business telephone line. The telephone company shall release to the commission the identity of any person connecting or operating an automatic dialing-announcing device when requested to do so by the commission pursuant to an investigation.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(6) A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations shall file with the commission the message to be used to comply

with the requirements of section 86-247. Such person shall file any subsequent change to the message with the commission within five days after the change.

**Source:** Laws 1993, LB 305, § 14; Laws 1997, LB 752, § 231; R.S.1943, (1999), § 86-1214; Laws 2002, LB 1105, § 112; Laws 2008, LB720, § 4.

Operative date January 1, 2009.

**86-251 Sequential dialing prohibited.**

A person shall not connect or operate an automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially which means in any manner other than a random manner. A detectable, predictable pattern which can be used to accurately project the device's number dialing shall satisfy a finding that sequential number dialing is taking place in violation of this section.

**Source:** Laws 1993, LB 305, § 15; R.S.1943, (1999), § 86-1215; Laws 2002, LB 1105, § 113.

**86-252 Commission; adopt rules and regulations.**

The commission shall adopt and promulgate rules and regulations necessary to carry out the Automatic Dialing-Announcing Devices Act. The rules and regulations shall include limitations on the length of calls and messages and the days of the week, holidays, and time of day when calls can be made.

**Source:** Laws 1993, LB 305, § 16; R.S.1943, (1999), § 86-1216; Laws 2002, LB 1105, § 114.

**86-253 Commission; enforcement.**

The commission may conduct investigations and shall enforce the Automatic Dialing-Announcing Devices Act. Upon written complaint and supporting affidavit that an applicable law, rule, or regulation has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against the party named in the complaint. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered. In addition to any criminal or other penalties, failure to comply with an applicable law, rule, or regulation shall constitute grounds for revocation or suspension of a permit.

**Source:** Laws 1993, LB 305, § 17; R.S.1943, (1999), § 86-1217; Laws 2002, LB 1105, § 115.

**86-254 Seizure of automatic dialing-announcing devices; when; destruction; liability.**

The commission, its agents or employees, or any peace officer of this state at the direction of the commission may, at any place in the state, seize without a warrant any automatic dialing-announcing device the operation of which does not conform in all respects to requirements imposed by subdivisions (1) and (2) of section 86-244 or any rules or regulations. The seized device shall constitute contraband. The commission may, upon satisfactory proof, direct return of a seized device when the evidence establishes the owner did not willfully or intentionally fail to comply with the applicable law, rules, or regulations. The commission may, upon finding that the owner of a seized device has willfully or

intentionally failed to comply with the applicable law, rules, or regulations, confiscate the device. Any device so confiscated may be destroyed. Destruction of a device shall not occur before all statutory appeal periods available to the owner have been exhausted. The seizure and destruction of an automatic dialing-announcing device shall not relieve any person from a fine, imprisonment, or other penalty for violation of the applicable law, rules, or regulations. The commission, its agents and employees, or any peace officer of this state shall not be liable for negligence for the seizure, confiscation, or destruction of any contraband pursuant to this section.

**Source:** Laws 1993, LB 305, § 18; R.S.1943, (1999), § 86-1218; Laws 2002, LB 1105, § 116.

**86-255 Commission decision; appeal.**

Any decision of the commission made pursuant to the Automatic Dialing-Announcing Devices Act or the rules and regulations may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1993, LB 305, § 19; Laws 2000, LB 1285, § 20; R.S.Supp.,2000, § 86-1219; Laws 2002, LB 1105, § 117.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**86-256 Automatic dialing-announcing device; registration required; when; message requirements; liability; filing required.**

(1) Any person using an automatic dialing-announcing device other than for telephone solicitations shall register the device with the commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the message to be used.

(2) All telephone messages transmitted by an automatic dialing-announcing device other than telephone solicitations shall:

(a) At the beginning of the message, state clearly the identity of the person on whose behalf the message is being transmitted;

(b) During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of the person operating the device; and

(c) Transmit messages only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the message.

(3) This section does not apply to (a) a message from any elementary, secondary, or postsecondary educational institution to any of its students, parents, or employees, (b) a message to a person with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship, (c) a message from an employer advising any of its employees of work schedules, or (d) a message from a political subdivision as defined in section 13-903.

(4) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-

Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

(5) A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall file with the commission the message to be used within twenty-four hours after the message is transmitted.

**Source:** Laws 1993, LB 305, § 21; R.S.1943, (1999), § 86-1221; Laws 2002, LB 1105, § 118; Laws 2008, LB720, § 5.  
Operative date January 1, 2009.

**86-257 Violations; administrative fine.**

The commission may administratively fine pursuant to section 75-156 any person who violates the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

**Source:** Laws 1993, LB 305, § 22; Laws 2000, LB 1285, § 21; R.S.Supp.,2000, § 86-1222; Laws 2002, LB 1105, § 119.

(d) INTRASTATE PAY-PER-CALL REGULATION

**86-258 Act, how cited.**

Sections 86-258 to 86-270 shall be known and may be cited as the Intrastate Pay-Per-Call Regulation Act.

**Source:** Laws 1993, LB 42, § 1; R.S.1943, (1999), § 86-1101; Laws 2002, LB 1105, § 120.

**86-259 Definitions, where found.**

For purposes of the Intrastate Pay-Per-Call Regulation Act, the definitions found in sections 86-260 and 86-261 apply.

**Source:** Laws 1993, LB 42, § 2; R.S.1943, (1999), § 86-1102; Laws 2002, LB 1105, § 121.

**86-260 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2002, LB 1105, § 122.

**86-261 Pay-per-call services, defined.**

Pay-per-call services means telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than or in addition to the charge for transmission of the call.

**Source:** Laws 2002, LB 1105, § 123.

**86-262 Common carriers; provide services; terms and conditions.**

Common carriers may provide intrastate transmission, under either contract or tariff, for pay-per-call services only under the terms and conditions set forth by the Intrastate Pay-Per-Call Regulation Act.

**Source:** Laws 1993, LB 42, § 3; R.S.1943, (1999), § 86-1103; Laws 2002, LB 1105, § 124.

#### **86-263 Rules and regulations regarding preambles.**

In addition to the general requirements set forth in subsection (1) of section 86-269, the commission specifically shall adopt and promulgate rules and regulations as necessary regarding preambles to intrastate pay-per-call programs consistent with 16 C.F.R. 308.1 through 308.9, as such regulations existed on January 1, 2002, pertaining to preamble requirements for interstate pay-per-call programs.

**Source:** Laws 1993, LB 42, § 4; R.S.1943, (1999), § 86-1104; Laws 2002, LB 1105, § 125.

#### **86-264 Common carrier; provide information to consumers.**

The common carrier providing intrastate transmission for pay-per-call services shall provide to consumers upon request the name, address, and customer service telephone number of any information provider to whom the common carrier provides such transmission service, either directly or through another entity such as a service bureau. The common carrier shall provide the information at no charge and within a reasonable time upon verbal or written request.

**Source:** Laws 1993, LB 42, § 5; R.S.1943, (1999), § 86-1105; Laws 2002, LB 1105, § 126.

#### **86-265 Option to block nine hundred services; charges; rules and regulations for involuntary blocks.**

(1) Local exchange carriers shall offer to their subscribers, when technically feasible, an option to block intrastate nine hundred service. Blocking shall be offered at no charge on a one-time basis to all residential telephone subscribers. For blocking requests not within the one-time option and for commercial subscribers, the local exchange carrier may charge a reasonable one-time fee for each blocking request. Requests by subscribers to remove a previously blocked intrastate nine hundred service shall be in writing to the local exchange carrier. The commission may adopt and promulgate rules and regulations to implement procedures for local exchange carriers to place involuntary blocks on subscribers who fail to pay for pay-per-call services.

(2) For purposes of this section, technically feasible means when the existing switch will accommodate the request for blocking.

**Source:** Laws 1993, LB 42, § 6; R.S.1943, (1999), § 86-1106; Laws 2002, LB 1105, § 127.

#### **86-266 Common carrier; prohibited acts.**

No common carrier shall disconnect or order the disconnection of a subscriber's basic telecommunications service as a result of the subscriber's failure to pay interstate or intrastate pay-per-call service charges.

**Source:** Laws 1993, LB 42, § 7; R.S.1943, (1999), § 86-1107; Laws 2002, LB 1105, § 128.

**86-267 Transmission services; acceptance of charges required.**

No common carrier shall provide transmission services for pay-per-call services originated by an information provider and charged to the consumer unless the called party has taken affirmative action clearly indicating that it accepts the charges for the collect pay-per-call service. This restriction includes eight hundred number call-back service.

**Source:** Laws 1993, LB 42, § 8; R.S.1943, (1999), § 86-1108; Laws 2002, LB 1105, § 129.

**86-268 Transmission services; limitations.**

No common carrier shall provide transmission services for any pay-per-call service which employs broadcast advertising that generates the audible tones necessary to complete a call to a pay-per-call service.

**Source:** Laws 1993, LB 42, § 9; R.S.1943, (1999), § 86-1109; Laws 2002, LB 1105, § 130.

**86-269 Enforcement; appeal.**

(1) The commission shall adopt and promulgate rules and regulations necessary to carry out the Intrastate Pay-Per-Call Regulation Act.

(2) The commission may conduct investigations and shall enforce the act.

(3) Upon written complaint and supporting affidavit that an applicable rule or regulation or any provision of the act has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against a party named in a complaint alleging violation of the act. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered by the commission.

(4) A decision of the commission made pursuant to the act and rules and regulations of the commission may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1993, LB 42, § 10; Laws 2000, LB 1285, § 18; R.S.Supp.,2000, § 86-1110; Laws 2002, LB 1105, § 131.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**86-270 Violations; administrative fine.**

After notice and a hearing, the commission may administratively fine pursuant to section 75-156 violators of the Intrastate Pay-Per-Call Regulation Act or the applicable rules and regulations adopted and promulgated under the act.

**Source:** Laws 1993, LB 42, § 11; Laws 2000, LB 1285, § 19; R.S.Supp.,2000, § 86-1111; Laws 2002, LB 1105, § 132.

**(e) INTERCEPTED COMMUNICATIONS****86-271 Definitions, where found.**

For purposes of sections 86-271 to 86-2,115, unless the context otherwise requires, the definitions found in sections 86-272 to 86-289 apply.

**Source:** Laws 1969, c. 854, § 1, p. 3210; Laws 1984, LB 625, § 1; Laws 1988, LB 899, § 1; R.S.1943, (1999), § 86-701; Laws 2002, LB 1105, § 133.

The Nebraska Supreme Court looks to federal law in interpreting the provisions of Nebraska's intercepted communications statutes, sections 86-701 through 86-712 (recodified in 2002 as sections 86-271 to 86-2,115). The test for issuance of a wiretap order under the provisions of Nebraska's intercepted communications statutes is whether the sworn information before the court is of sufficient apparent reliability to justify a finding that there is probable cause to believe that an offense cognizable under said statutes has been or is being committed. *State v. Hinton*, 226 Neb. 787, 415 N.W.2d 138 (1987).

Conversations in which one party has consented to the recording of the conversation are not oral communications within the meaning of communication interception statutes (recodified in 2002 as sections 86-271 to 86-2,115). *State v. Manchester*, 220 Neb. 41, 367 N.W.2d 733 (1985).

Evidence of telephone conversations obtained by wiretaps in violation of this article (recodified in 2002 as sections 86-271 to 86-2,115) are inadmissible in evidence if timely objection is made. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

### **86-272 Aggrieved person, defined.**

Aggrieved person means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

**Source:** Laws 2002, LB 1105, § 134.

### **86-273 Aural transfer, defined.**

Aural transfer means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

**Source:** Laws 2002, LB 1105, § 135.

### **86-274 Contents, defined.**

Contents, when used with respect to any wire, electronic, or oral communication, includes any information concerning the substance, purport, or meaning of such communication.

**Source:** Laws 2002, LB 1105, § 136.

### **86-275 Electronic, mechanical, or other device, defined.**

Electronic, mechanical, or other device means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

- (1) Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (a) furnished to the subscriber or user by a provider in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used by the subscriber or user in the ordinary course of its business or (b) being used by a provider in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of his or her duties; or
- (2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

**Source:** Laws 2002, LB 1105, § 137.

### **86-276 Electronic communication, defined.**

Electronic communication means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system but does not include:

- (1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;
- (2) Any wire or oral communication;

- (3) Any communication made through a tone-only mobile paging device; or
- (4) Any communication from a mobile tracking device as defined in section 86-2,103.

**Source:** Laws 2002, LB 1105, § 138.

**86-277 Electronic communication service, defined.**

Electronic communication service means any service which provides to users thereof the ability to send or receive wire or electronic communication.

**Source:** Laws 2002, LB 1105, § 139.

**86-278 Electronic communication system, defined.**

Electronic communication system means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications and any computer facilities or related electronic equipment for the electronic storage of such communication.

**Source:** Laws 2002, LB 1105, § 140.

**86-279 Electronic storage, defined.**

Electronic storage means:

- (1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (2) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

**Source:** Laws 2002, LB 1105, § 141.

**86-280 Intercept, defined.**

Intercept means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

**Source:** Laws 2002, LB 1105, § 142.

**86-281 Investigative or law enforcement officer, defined.**

Investigative or law enforcement officer means a law enforcement officer as defined in section 81-1401 and includes the Attorney General and his or her deputies or assistants, a county attorney and his or her deputies, and agents of the United States Federal Bureau of Investigation, Drug Enforcement Administration, Marshals Service, Secret Service, Bureau of Alcohol, Tobacco, and Firearms, Treasury Department, Customs Service, Justice Department, and Internal Revenue Service.

**Source:** Laws 2002, LB 1105, § 143.

**86-282 Mobile telephone communication, defined.**

Mobile telephone communication means a radio communication that is transmitted on frequencies allocated under 47 C.F.R. 26.301, as such regulation existed on January 1, 2002.

**Source:** Laws 2002, LB 1105, § 144.

**86-283 Oral communication, defined.**

Oral communication means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but does not include any electronic communication.

**Source:** Laws 2002, LB 1105, § 145.

Pursuant to subsection (12) of this section (recodified in 2002 as section 86-283) there is no objective expectation of privacy in face-to-face conversations occurring in jail visiting rooms. State v. Strohl, 255 Neb. 918, 587 N.W.2d 675 (1999).

**86-284 Pen register, defined.**

Pen register means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached but does not include (1) any device used by a provider or customer of an electronic communication service for billing or recording as an incident to billing for communication service provided by such provider or (2) any device used by a provider or customer of an electronic communication service for cost accounting or other like purposes in the ordinary course of its business.

**Source:** Laws 2002, LB 1105, § 146.

**86-285 Provider, defined.**

Provider means any person who provides an electronic communication service and who has authorized access to or possession or control of the facilities or equipment necessary to implement (1) the order to intercept a wire or electronic communication or (2) the order to install a pen register or a trap-and-trace device.

**Source:** Laws 2002, LB 1105, § 147.

**86-286 Readily accessible to the general public, defined.**

Readily accessible to the general public means, with respect to a radio communication, that such communication is not:

- (1) Scrambled or encrypted;
- (2) Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over an electronic communication system by a provider unless the communication is a tone-only paging system communication; or
- (5) Transmitted on frequencies allocated for satellite communications under 47 C.F.R. part 25, for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, for aural broadcast auxiliary stations under subpart E of 47 C.F.R. part 74, for television broadcast auxiliary stations under subpart F of 47 C.F.R. part 74, or for fixed microwave services under 47 C.F.R. part 101, as such regulations existed on January 1, 2002, unless, in the case of a communication transmitted on a frequency allocated under 47 C.F.R. part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

**Source:** Laws 2002, LB 1105, § 148.

**86-287 Trap-and-trace device, defined.**

Trap-and-trace device means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

**Source:** Laws 2002, LB 1105, § 149.

**86-288 User, defined.**

User means any person or entity who:

- (1) Uses an electronic communication service; and
- (2) Is duly authorized by the provider of such service to engage in such use.

**Source:** Laws 2002, LB 1105, § 150.

**86-289 Wire communication, defined.**

Wire communication means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection, including the use of such connection in a switching station, between the point of origin and the point of reception furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications. Wire communication includes any electronic storage of such communication but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

**Source:** Laws 2002, LB 1105, § 151.

**86-290 Unlawful acts; penalty.**

(1) Except as otherwise specifically provided in sections 86-271 to 86-295, it is unlawful to:

(a) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(b) Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication or (ii) such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection;

(d) Intentionally use or endeavor to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection; or

(e) Having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 86-271 to 86-295 to intercept a wire, oral, or electronic communication, give notice or

attempt to give notice of the possible interception to any person in order to obstruct, impede, or prevent such interception.

Except as provided in subdivisions (4)(a) and (5)(b) of this section, any person who violates this subsection is guilty of a Class IV felony.

(2)(a) It is not unlawful under sections 86-271 to 86-295 for an employer on his, her, or its business premises, for an operator of a switchboard, or for an officer, employee, or agent of any provider, the facilities of which are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his, her, or its employment while engaged in any activity which is a necessary incident to the rendition of his, her, or its service or to the protection of the rights or property of the carrier or provider of such communication services. Such employers and providers shall not utilize service observing or random monitoring except for mechanical, service quality, or performance control checks as long as reasonable notice of the policy of random monitoring is provided to their employees.

(b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

(d) It is not unlawful under sections 86-271 to 86-295:

(i) To intercept or access an electronic communication made through an electronic communications system that is configured so that such electronic communication is readily accessible to the general public;

(ii) To intercept any radio communication which is transmitted:

(A) By any station for the use of the general public or that relates to ships, aircraft, vehicles, or persons in distress;

(B) By any governmental, law enforcement, emergency management, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(C) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(D) By any marine or aeronautical communications system;

(iii) To intercept or receive, or to assist in the interception or receipt of:

(A) Any communications service offered over a cable system as provided in 47 U.S.C. 553, as such section existed on January 1, 2002; or

(B) Any satellite cable programming for private viewing as provided in 47 U.S.C. 605, as such section existed on January 1, 2002;

(iv) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of such interference; or

(v) For other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system if such communication is not scrambled or encrypted.

(e) It is not unlawful under sections 86-271 to 86-295 and 86-298 to 86-2,101:

(i) To use a pen register or a trap-and-trace device; or

(ii) For a provider of an electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service from fraudulent, unlawful, or abusive use of such service.

(3)(a) Except as provided in subsection (1) of this section and subdivision (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication, other than one to such person or entity or an agent thereof, while in transmission on such service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing an electronic communication service to the public may divulge the contents of any such communication:

(i) As otherwise authorized in subdivision (a) of this subsection or section 86-292;

(ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) Which was inadvertently obtained by the provider and which appears to pertain to the commission of a crime if such divulgence is made to a law enforcement officer.

(4)(a) If the offense is a first offense under subsection (1) of this section and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain and the wire or electronic communication with respect to the offense under subsection (1) of this section is a radio communication that is not scrambled or encrypted, then:

(i) If the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication and the conduct is not that described in subsection (5) of this section, the offense is a Class I misdemeanor; or

(ii) If the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication, the offense is a Class III misdemeanor.

(b) Conduct, otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted: (i) To a broadcasting station for purposes of retransmission to the general public; or (ii) as an audio subcarrier intended for redistribution to facilities open to the public but not including data transmissions or telephone calls, is not an offense under this subsection unless the

conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)(a) If the communication is: (i) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of sections 86-271 to 86-295 is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or (ii) a radio communication that is transmitted on frequencies allocated for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, and that is not scrambled or encrypted and the conduct in violation of sections 86-271 to 86-295 is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the state in a court of competent jurisdiction.

(b) In an action under this subsection:

(i) If the violation is a first offense by the person under subsection (1) of this section and such person has not been found liable in a civil action under section 86-297, the state shall be entitled to appropriate injunctive relief; and

(ii) If the violation is a second or subsequent offense under subsection (1) of this section or such person has been found liable in any prior civil action under section 86-297, the person shall be subject to a mandatory five-hundred-dollar civil fine.

(c) The court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than five hundred dollars for each violation of such an injunction.

**Source:** Laws 1969, c. 854, § 2, p. 3211; Laws 1977, LB 39, § 329; Laws 1988, LB 899, § 2; Laws 1996, LB 43, § 52; R.S.1943, (1999), § 86-702; Laws 2002, LB 1105, § 152.

Message intercepted by one who was not a party to the communication, nor acting under color of law or with prior consent, is not admissible in evidence. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

### **86-291 Interception; court order.**

The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections 86-271 to 86-295, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, sexual assault of a child or a vulnerable adult, visual depiction or possessing a visual depiction of sexually explicit conduct of a child, or child enticement by means of a computer, or any conspiracy to commit any such offense.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her

designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

**Source:** Laws 1969, c. 854, § 3, p. 3213; Laws 1971, LB 294, § 1; Laws 1988, LB 899, § 3; R.S.1943, (1999), § 86-703; Laws 2002, LB 1105, § 153; Laws 2006, LB 1113, § 53.

In a gambling conviction based on evidence obtained by wiretap, court held that federal law preempts the field, but does not require "all possible" investigative techniques be tried before authorizing wiretap. *State v. Kolosseus*, 198 Neb. 404, 253 N.W.2d 157 (1977).

A plea of nolo contendere waived right to test the statute's constitutionality. *State v. Abramson*, 197 Neb. 135, 247 N.W.2d 59 (1976).

Nebraska statutory scheme (recodified in 2002 as sections 86-271 to 86-2,115) with respect to wiretaps does not prevent the involvement of federal officers in state wiretap authorizations. *United States v. Van Horn*, 579 F.Supp. 804 (D. Neb. 1984).

### **86-292 Interception; privileged use.**

(1) Any investigative or law enforcement officer who, by any means authorized by sections 86-271 to 86-295, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by sections 86-271 to 86-295, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his or her official duties.

(3) Any person who has received, by any means authorized by sections 86-271 to 86-295, any information concerning a wire, electronic, or oral communication or evidence derived therefrom intercepted in accordance with sections 86-271 to 86-295 may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding held under the authority of the United States, of this state, or of any other state.

(4) No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, sections 86-271 to 86-295 shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized herein, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of a district court when such judge finds on subsequent application that the contents were otherwise intercepted in

accordance with sections 86-271 to 86-295. Such application shall be made as soon as practicable.

**Source:** Laws 1969, c. 854, § 4, p. 3213; Laws 1988, LB 899, § 4; R.S.1943, (1999), § 86-704; Laws 2002, LB 1105, § 154.

**86-293 Interception; procedure; appeal.**

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing upon oath or affirmation to a judge of a district court and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the applicant;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted except as otherwise provided in subsection (13) of this section, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application made to any judge for authorization to intercept or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application and the action taken by the judge on each such application; and

(f) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications or mobile telephone communications within the territorial jurisdiction of the court if the judge determines on the basis of the facts submitted by the applicant that: (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 86-291; (b) there is probable cause for belief that particular communications concerning that offense will be obtained through

such interception; (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and (d) except as otherwise provided in subsection (13) of this section, there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used or are about to be used in connection with the commission of such offense or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify: (a) The identity of the person, if known, whose communications are to be intercepted; (b) except as otherwise provided in subsection (13) of this section, the nature and location of the communications facilities as to which or the place where authority to intercept is granted; (c) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates; (d) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) Each order authorizing the interception of a wire, electronic, or oral communication shall, upon request of the applicant, direct that a provider, landlord, custodian, or other person furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that such provider, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any provider, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for expenses incurred in providing such facilities or assistance at the prevailing rates. A provider that has received an order as provided in this subsection may, under seal, move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the Attorney General or county attorney as the case may be, shall decide such a motion expeditiously.

(6) No order entered under this section may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization nor in any event longer than thirty days. Extensions of an order may be granted but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to avoid and prevent interception of confidential communications to or from persons of the classes described in sections 20-146 and 27-503 to 27-506 unless there exists probable cause to believe such persons have committed, are committing, or are conspiring to commit offenses specified in section 86-291, shall be conducted in such a way as to minimize the interception of communications not otherwise subject

to interception under sections 86-271 to 86-295, and shall terminate upon attainment of the authorized objective or in any event in thirty days. Upon a showing of good cause as set forth in the application, in the event the intercepted communication is in a foreign language and an expert in that foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

(7)(a) Whenever an order authorizing interception is entered pursuant to sections 86-271 to 86-295, the order shall, at a minimum, require reports to be filed with the judge who issued the order no earlier than the twelfth day and no later than the sixteenth day after the order is issued and twelve to sixteen days thereafter showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Additional reports shall be filed at such other intervals as the judge may require. Time computed under this subdivision shall commence on the first calendar day after the order is issued.

(b) If the required reports are not filed, the judge shall exclude from evidence any communication intercepted after that date otherwise authorized by the order unless the person required to file the reports establishes that the failure was for good cause.

(8)(a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by sections 86-271 to 86-295 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to subsections (1) and (2) of section 86-292 for investigations. The presence of the seal provided for by this subsection or a satisfactory explanation for the absence thereof shall be a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived therefrom under subsection (3) of section 86-292.

(b) Applications made and orders granted under sections 86-271 to 86-295 shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of a district court, shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of this subsection may be punished as contempt of the issuing or denying judge.

(9)(a) Within a reasonable time, but not longer than ninety days after the termination of the period of an order or extensions thereof, the issuing judge shall cause the applicant to serve on the persons named in the order or the application and such other parties to intercepted communications which the judge may determine to be in the interest of justice an inventory which shall include: (i) The entry of the order of application; (ii) the date of such entry and

the period of authorized or approved interception or the denial of the application; and (iii) whether, during such period, wire, electronic, or oral communications were or were not intercepted.

(b) The judge, upon the filing of a motion by a person whose communications were intercepted, may make available to such person or his or her counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On application to a judge of a district court, the serving of the inventory required by this subsection shall be postponed for ninety days. Thereafter, on an ex parte showing of good cause to a judge of a district court, the serving of the inventory required by this subsection may be further postponed.

(c) If the inventory is not served as required by this subsection, any communication intercepted under an order or extension thereof shall be excluded as evidence before all courts of this state unless the failure to serve such inventory was for good cause, the failure to serve the inventory did not substantially affect the rights of the defendant in the matter, or the serving of the inventory was postponed as allowed and ordered pursuant to subdivision (b) of this subsection.

(d) Nothing in this subsection shall be construed to limit the judge's power of contempt.

(10) The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. This ten-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with such information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(11) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state may move to suppress the contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication or evidence derived therefrom shall be treated as having been obtained in violation of sections 86-271 to 86-295. The judge, upon the filing of such motion by the aggrieved person, may in his or her discretion make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(12) In addition to any other right to appeal, the Attorney General or any county attorney shall have the right to appeal from an order granting a motion to suppress made under subsection (11) of this section or the denial of an

application for an order of approval if the Attorney General or the county attorney certifies to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(13) The requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section relating to the specification of the facilities from which or the place where the communication is to be intercepted shall not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application contains a full and complete statement as to why such specification is not practical and identifies the person believed to be committing the offense and whose communications are to be intercepted; and

(iii) The judge finds that such specification is not practical; and

(b) In the case of an application with respect to a wire or electronic communication:

(i) The application is approved by both the Attorney General and the county attorney where the application is sought or a deputy attorney general or designated deputy county attorney if the Attorney General or county attorney is outside of his or her respective jurisdiction;

(ii) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) The judge finds that such purpose has been adequately shown.

(14) An interception of a communication under an order with respect to which the requirements of subdivisions (1)(b), (3)(d), and (4)(b) of this section do not apply by reason of subsection (13) of this section shall not begin until the facility from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.

(15) As used in subdivisions (7)(b) and (9)(c) of this section, good cause shall include a showing that the failure to file the report or serve the inventory was not intentional and that a substantial reason or special circumstance, including an act of God, reasonable unavailability of the applicant or necessary law enforcement officer due to death, medical condition, incapacitation, inaccessibility, or location, or other substantial reason or special circumstance as the court in its discretion determines, excused the failure to file the report or serve the inventory.

**Source:** Laws 1969, c. 854, § 5, p. 3214; Laws 1976, LB 583, § 1; Laws 1988, LB 899, § 5; R.S.1943, (1999), § 86-705; Laws 2002, LB 1105, § 155.

1. Application for wiretap
2. Order
3. Suppression of evidence
4. Miscellaneous

**1. Application for wiretap**

It is not necessary for the State to utilize all investigative techniques before making an application for a wiretap. It is sufficient that the State show that other techniques are impractical under the circumstances and that it would be unreasonable to require pursuit of those avenues of investigation. The application for a wiretap must contain a full and complete disclosure of all that has been done so that the court may make a judgment as to whether more should be required before a wiretap is authorized. An affidavit in support of an application for a wiretap is to be tested in a practical and commonsense fashion. *State v. Nash*, 233 Neb. 318, 444 N.W.2d 914 (1989).

An application for a wiretap shall include sufficient facts which will support a believable conclusion that reasonable or ordinary investigatory techniques had been tried and had failed, or appeared unlikely to succeed, in obtaining evidence regarding a suspect's illegal activity. *State v. Whitmore*, 221 Neb. 450, 378 N.W.2d 150 (1985).

The statement envisioned by subsection (1)(c) of this section (formerly subdivision (1)(c) of section 86-705) is a statement of fact demonstrating exhaustion or unavailability of normal or conventional investigative techniques. *State v. Golter*, 216 Neb. 36, 342 N.W.2d 650 (1983).

This section requires a separate showing of the necessity of a wiretap as a means of investigation of the crime being committed. To demonstrate necessity, the prospective and retrospective failure of alternative investigative techniques must be apparent from the facts submitted by the applicant. This section (formerly section 86-705) applies whether the wiretap sought is the first one covering a particular criminal activity, or whether a previous tap has furnished information which is the basis for the application for another tap. The validity of the application for the wiretap authorization and for the order of the authorizing judge cannot be established by the exercise of hindsight. They must be viewed in the light of circumstances as they existed and were known or reasonably anticipated at the time, and cannot be "bootstrapped" by what the wiretap later uncovered. A showing that two or more principals are involved in one conspiracy as to one of which a sufficient affidavit has been filed is not alone sufficient to support an application as to all of the alleged principals or their telephones. In this case, affidavits are not sufficient to satisfy statutory requirement of necessity for wiretap. *State v. Lane*, 211 Neb. 46, 317 N.W.2d 750 (1982).

Affidavits incorporated into application were sufficiently detailed to satisfy the requirements of this section (formerly section 86-705). *State v. Lozano*, 209 Neb. 772, 311 N.W.2d 529 (1981).

Subdivision (1)(c) of this section (formerly subdivision (1)(c) of section 86-705) does not require the exhaustion of all possible or reasonable avenues of investigation. The statutory requirements are stated in the alternative, i.e., that other methods must have been tried and failed "or" that other procedures are unlikely to succeed or are too dangerous. *State v. Holmes and Beardslee*, 208 Neb. 114, 302 N.W.2d 382 (1981).

In order to obtain a wiretap, the application and affidavit for the wiretap must set out facts sufficient to establish all four essential requirements of subsection (3) of this section (formerly subsection (3) of section 86-705). *State v. Hinchion, DiBiase, Olsen, and Cullen*, 207 Neb. 478, 299 N.W.2d 748 (1980).

**2. Order**

Although interceptions of telephonic communications need not cease upon the obtaining of a described communication,

unless the order authorizing them so provides, they must cease when the objective of the authorization has been achieved, and in no event may the interceptions extend beyond thirty days. *State v. Brennen*, 218 Neb. 454, 356 N.W.2d 861 (1984).

An order not containing a provision that the authorization to intercept calls shall be conducted in such a way so as to avoid and prevent interception of confidential information is not per se invalid absent a showing that any substantial right of the defendant has been violated. *State v. Brennen*, 214 Neb. 734, 336 N.W.2d 79 (1983).

**3. Suppression of evidence**

The ultimate burden of showing an unlawful interception rests upon the party against whom the fruits of the electronic surveillance are offered. *State v. Nash*, 233 Neb. 318, 444 N.W.2d 914 (1989).

Evidence derived from prior wiretap found illegal in *State v. Lane*, 211 Neb. 46, 317 N.W.2d 750 (1982), was used to support application for wiretap in present case; thus, wiretap in this case also suppressed. *State v. Richter*, 211 Neb. 63, 317 N.W.2d 759 (1982).

Evidence which is obtained as the result of a search which is based solely on a wiretap which is in violation of this act (sections 86-701 to 86-712, recodified in 2002 as sections 86-291 to 86-2,115) must be suppressed where the defendant had waived his fourth amendment rights under the U.S. Constitution, but not his statutory rights under this act. *State v. Aulrich*, 209 Neb. 546, 308 N.W.2d 739 (1981).

Appeals by the state from an order suppressing evidence under this section shall be pursuant to section 29-824. *State v. Hinchion, DiBiase, Olsen, and Cullen*, 207 Neb. 478, 299 N.W.2d 748 (1980).

**4. Miscellaneous**

An interlocutory appeal brought under section 86-705(12), R.R.S.1943, (recodified in 2002 as section 86-293(12)) shall be heard according to the procedure set out in section 29-824, R.R.S.1943. *State v. Anderson and Hochstein*, 207 Neb. 51, 296 N.W.2d 440 (1980).

This section (formerly section 86-705) is virtually identical to 18 U.S.C. section 2518. This section is intended to assure that wire tapping is not resorted to when traditional investigative techniques would suffice. However, it is not necessary to exhaust all other possible techniques before a wiretap order may issue. *State v. Trader*, 205 Neb. 282, 287 N.W.2d 78 (1980); *State v. DiMauro & Kessler*, 205 Neb. 275, 287 N.W.2d 74 (1980).

In a gambling conviction based on evidence obtained by wiretap, court held that federal law preempts the field, but does not require "all possible" investigative techniques be tried before authorizing wiretap. *State v. Kolosseus*, 198 Neb. 404, 253 N.W.2d 157 (1977).

The statute prescribes a rule of evidence applicable to civil as well as criminal proceedings. *White v. Longo*, 190 Neb. 703, 212 N.W.2d 84 (1973).

Misdemeanor gambling is an inherently serious crime and one of those typically involving elements of organized crime. Gambling is also one of the crimes enumerated in this statute and in 18 U.S.C. section 2516. Therefore, wiretap evidence obtained in the investigation of misdemeanor gambling is admissible in a probation revocation hearing. *U.S. v. Frederickson*, 581 F.2d 711 (8th Cir. 1978).

**86-294 Interception; reports.**

In January of each year the Attorney General and each county attorney shall report to the Administrative Office of the United States Courts:

(1) The following information with respect to each application for an order or extension made during the preceding calendar year: (a) The fact that an order

or extension was applied for; (b) the kind of order or extension applied for; (c) the fact that the order or extension was granted as applied for, was modified, or was denied; (d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order; (e) the offense specified in the order or application, or extension of an order; (f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and (g) the nature of the facilities from which or the place where communications were to be intercepted;

(2) A general description of the interceptions made under such order or extension, including (a) the approximate nature and frequency of incriminating communications intercepted, (b) the approximate nature and frequency of other communications intercepted, (c) the approximate number of persons whose communications were intercepted, and (d) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(3) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(4) The number of trials resulting from such interceptions;

(5) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(6) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(7) The information required by subdivisions (2) through (6) of this section with respect to orders or extensions obtained in the preceding calendar year.

**Source:** Laws 1969, c. 854, § 6, p. 3218; R.S.1943, (1999), § 86-706; Laws 2002, LB 1105, § 156.

#### **86-295 Violations; penalty.**

It is unlawful for any person to (1) intentionally and without lawful authority cut, break, tap, or make connection with any telegraph or telephone line, wire, cable, or instrument or electronic, mechanical, or other device or read or copy in any unauthorized manner any message, communication, or report passing over it, in this state, (2) intentionally and without lawful authority prevent, obstruct, or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance, or delivery in this state of any authorized message, communication, or report by or through any telegraph or telephone line, wire, or cable under the control of any telegraph or telephone company doing business in this state, (3) aid, agree with, employ, or conspire with any person or persons to unlawfully do or perform, or cause to be done, any of the acts described in subdivisions (1) and (2) of this section, or (4) occupy, use a line, or knowingly permit another to occupy, use a line, room, table, establishment, or apparatus to unlawfully do or cause to be done any of the acts described in this section. Any person who violates this section is guilty of a Class IV felony.

**Source:** Laws 1969, c. 854, § 7, p. 3219; Laws 1977, LB 39, § 330; Laws 1988, LB 899, § 6; R.S.1943, (1999), § 86-707; Laws 2002, LB 1105, § 157.

#### **86-296 Electronic devices; prohibited acts; penalty.**

(1) Except as otherwise specifically provided in sections 86-271 to 86-295 and this section, any person who intentionally:

(a) Sends in intrastate commerce any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications, is guilty of a Class IV felony; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications and that such device or any component thereof has been or will be transported in intrastate commerce, is guilty of a Class IV felony.

(2) This section shall not be construed to prohibit the exchange of electronic, mechanical, or other devices between law enforcement officers or federally funded law enforcement associations.

(3) It is unlawful for a provider or an officer, agent, or employee of or a person under contract with a provider, in the normal course of the business of providing electronic communication service, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, oral, or electronic communications. Any person who violates this subsection is guilty of a Class IV felony.

(4) It is lawful for an officer, agent, or employee of or a person under contract with the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send or carry in intrastate commerce, manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the unlawful surreptitious interception of wire, electronic, or oral communications.

**Source:** Laws 1988, LB 899, § 7; R.S.1943, (1999), § 86-707.01; Laws 2002, LB 1105, § 158.

#### **86-297 Interception; civil action.**

(1) Any person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of sections 86-271 to 86-295 and 86-298 to 86-2,103 may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In an action under this section, appropriate relief includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3)(a) In an action under this section, if the conduct in violation of sections 86-271 to 86-295 and 86-298 to 86-2,103 is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies

allocated for remote pickup broadcast stations under subpart D of 47 C.F.R. part 74, as such regulations existed on January 1, 2002, that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

(i) If the person who engaged in such conduct has not previously been enjoined under subsection (5) of section 86-290 and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff or statutory damages of not less than fifty dollars and not more than five hundred dollars; or

(ii) If on one prior occasion the person who engaged in such conduct has been enjoined under subsection (5) of section 86-290 or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff or statutory damages of not less than one hundred dollars and not more than one thousand dollars.

(b) In any other action under this section, the court may assess as damages whichever is the greater of:

(i) The sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(ii) Statutory damages of whichever is the greater of one hundred dollars a day for each day of violation or ten thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section 86-293, or (c) a good faith determination that section 86-290 permitted the conduct complained of shall be a complete defense against any civil or criminal action brought under sections 86-271 to 86-295 and 86-298 to 86-2,103 or any other law.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

**Source:** Laws 1988, LB 899, § 8; R.S.1943, (1999), § 86-707.02; Laws 2002, LB 1105, § 159.

**86-298 Pen register; trap-and-trace device; restrictions on use; penalty.**

(1) Except as provided in this section, no person may install or use a pen register or a trap-and-trace device without first obtaining a court order under section 86-2,100. Nothing in sections 86-271 to 86-2,110 shall be construed to prohibit an emergency operator from conducting a trap or trace of a telephone number during an emergency.

(2) The prohibition of subsection (1) of this section shall not apply with respect to the use of a pen register or a trap-and-trace device by a provider:

(a) Relating to the operation, maintenance, and testing of an electronic communication service, to the protection of the rights or property of such provider or to the protection of users of that service from abuse of service or unlawful use of service;

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing

service toward the completion of the wire or electronic communication, or a user of such service from fraudulent, unlawful, or abusive use of service; or

(c) When the consent of the user of such service has been obtained.

(3) Any person who knowingly violates subsection (1) of this section is guilty of a Class I misdemeanor.

**Source:** Laws 1988, LB 899, § 9; R.S.1943, (1999), § 86-707.03; Laws 2002, LB 1105, § 160.

**86-299 Pen register; trap-and-trace device; application for order.**

(1) An investigative or law enforcement officer may make application for an order or an extension of an order under section 86-2,100 authorizing or approving the installation and use of a pen register or a trap-and-trace device under sections 86-298 to 86-2,101 to a county or district court. Such application shall be in writing and shall be under oath or affirmation.

(2) An application under subsection (1) of this section shall include:

(a) The identity of the investigative or law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

**Source:** Laws 1988, LB 899, § 10; R.S.1943, (1999), § 86-707.04; Laws 2002, LB 1105, § 161.

**86-2,100 Pen register; trap-and-trace device; court order.**

(1) Upon an application made under section 86-299, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap-and-trace device within the jurisdiction of the court if the court finds that the investigative or law enforcement officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section:

(a) Shall specify:

(i) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap-and-trace device is to be attached;

(ii) The identity, if known, of the person who is the subject of the criminal investigation;

(iii) The number and, if known, physical location of the telephone line to which the pen register or trap-and-trace device is to be attached and, in the case of a trap-and-trace device, the geographic limits of the order; and

(iv) A statement of the offense to which the information likely to be obtained by the pen register or trap-and-trace device relates; and

(b) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap-and-trace device.

(3)(a) An order issued under this section shall authorize the installation and use of a pen register or a trap-and-trace device for a period not to exceed sixty days.

(b) Extensions of such an order may be granted but only upon an application for an order under section 86-299 and upon the judicial finding required by subsection (1) of this section. The period of extension shall be for a period not to exceed sixty days.

(4) An order issued under this section shall direct that:

(a) The order be sealed until otherwise ordered by the court; and

(b) The person owning or leasing the line to which the pen register or a trap-and-trace device is attached or the person who has been ordered by the court to provide assistance to the applicant not disclose the existence of the pen register or trap-and-trace device or the existence of the investigation to the listed subscriber or to any other person unless or until otherwise ordered by the court.

**Source:** Laws 1988, LB 899, § 11; R.S.1943, (1999), § 86-707.05; Laws 2002, LB 1105, § 162.

**86-2,101 Pen register; trap-and-trace device; installation.**

(1) Upon the request of an investigative or law enforcement officer authorized to install and use a pen register under sections 86-298 to 86-2,101, a provider, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such assistance is directed by a court order as provided in section 86-2,100.

(2) Upon the request of an investigative or law enforcement officer authorized to receive the results of a trap-and-trace device under sections 86-298 to 86-2,101, a provider, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities, and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place if such installation and assistance is directed by a court order as provided in section 86-2,100. Unless otherwise ordered by the court, the results of the trap-and-trace device shall be furnished to the investigative or law enforcement officer, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under sections 86-298 to 86-2,101.

(5) A good faith reliance on a court order, a legislative authorization, or a statutory authorization shall be a complete defense against any civil or criminal action brought under sections 86-298 to 86-2,101 or any other law.

**Source:** Laws 1988, LB 899, § 12; R.S.1943, (1999), § 86-707.06; Laws 2002, LB 1105, § 163.

**86-2,102 Satellites; prohibited acts; penalty.**

(1) Any person who, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission is guilty of a Class IV felony.

(2) This section shall not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States or this state.

**Source:** Laws 1988, LB 899, § 13; R.S.1943, (1999), § 86-707.07; Laws 2002, LB 1105, § 164.

**86-2,103 Mobile tracking device; use.**

(1) A district court may issue a warrant or other order for the installation of a mobile tracking device, and such order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction if the device is installed in that jurisdiction.

(2) For purposes of this section, mobile tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object.

**Source:** Laws 1988, LB 899, § 14; R.S.1943, (1999), § 86-707.08; Laws 2002, LB 1105, § 165.

**86-2,104 Electronic communication service; unauthorized access; penalty.**

(1) Except as provided in subsection (3) of this section, any person who (a) intentionally accesses without authorization a facility through which an electronic communication service is provided or (b) intentionally exceeds an authorization to access the facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such service is subject to the penalties provided in subsection (2) of this section.

(2) The penalty for an offense under subsection (1) of this section is (a) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain (i) a Class I misdemeanor for the first offense and (ii) a fine or imprisonment for not more than two years, or both, for any subsequent offense and (b) a Class IV felony for any other offense.

(3) Subsection (1) of this section shall not apply with respect to conduct authorized (a) by the person or entity providing an electronic communication service, (b) by a user of that service with respect to a communication of or intended for that user, or (c) by section 86-293 or 86-2,107.

**Source:** Laws 1988, LB 899, § 15; R.S.1943, (1999), § 86-707.09; Laws 2002, LB 1105, § 166.

**86-2,105 Electronic communication service; disclosure.**

(1) Except as provided in subsection (2) of this section, (a) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by the service and (b) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on the service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage of computer processing.

(2) A person or entity may divulge the contents of a communication:

(a) To an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(b) As otherwise authorized in section 86-290, 86-292, or 86-2,106;

(c) With the lawful consent of the originator or an addressee or intended recipient of such communication or the subscriber in the case of remote computing service;

(d) To a person employed or authorized or whose facilities are used to forward such communication to its destination;

(e) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of the service; or

(f) To a law enforcement officer if such contents (i) were inadvertently obtained by the provider and (ii) appear to pertain to the commission of a crime.

**Source:** Laws 1988, LB 899, § 16; R.S.1943, (1999), § 86-707.10; Laws 2002, LB 1105, § 167.

**86-2,106 Electronic communication service; remote computing service; disclosure; government access.**

(1) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred eighty days or less, only pursuant to a warrant. A governmental entity may require the disclosure by a provider of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred eighty days by the means available under subsection (2) of this section.

(2)(a) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this subsection is made applicable by subdivision (2)(b) of this section (i) without required notice to the subscriber or customer if the governmental entity obtains a warrant or (ii) with prior notice from the governmental entity to the subscriber or customer if the governmental entity (A) uses an administrative subpoena or (B) obtains a court order for such disclosure under subsection (4) of this section, except that delayed notice may be given pursuant to section 86-2,108.

(b) Subdivision (2)(a) of this section shall apply to any electronic communication that is held or maintained on that service (i) on behalf of, and received by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from, a subscriber to or customer of such remote computing service and (ii) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3)(a)(i) Except as provided in subdivision (3)(a)(ii) of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to any person other than a governmental entity.

(ii) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service not including the contents of communications covered by subsection (1) or (2) of this section to a governmental entity only when the governmental entity (A) uses an administrative subpoena, (B) obtains a warrant, (C) obtains a court order for such disclosure under subsection (4) of this section, or (D) has the consent of the subscriber or customer to such disclosure.

(b) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(4) A court order for disclosure under subsection (2) or (3) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication or the records or other information sought are relevant to a legitimate law enforcement inquiry. A court issuing an order pursuant to this section, on a motion made promptly by the provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order would otherwise cause an undue burden on such provider.

(5) No cause of action shall lie in any court against any provider, its officers, employees, or agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under sections 86-2,104 to 86-2,110.

**Source:** Laws 1988, LB 899, § 17; R.S.1943, (1999), § 86-707.11; Laws 2002, LB 1105, § 168.

**86-2,107 Remote computing service; court order for government access.**

(1)(a) A governmental entity acting under subsection (2) of section 86-2,106 may include in its subpoena or court order a requirement that the provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation unless such notice is delayed pursuant to section 86-2,108.

(c) The provider shall not destroy such backup copy until the later of (i) the delivery of the information or (ii) the resolution of any proceedings including appeals of any proceeding concerning the subpoena or court order.

(d) The provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such provider (i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request and (ii) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under subdivision (a) of this subsection if in its sole discretion such entity determines that there is reason to believe that notification under this section and section 86-2,106 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination shall not be subject to challenge by the subscriber, customer, or provider.

(2)(a) Within fourteen days after notice by the governmental entity to the subscriber or customer under subdivision (1)(b) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate court. Such motion or application shall contain an affidavit or sworn statement (i) stating that the applicant is a subscriber to or customer of the service from which the contents of electronic communications maintained for him or her have been sought and (ii) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110 in some other respect.

(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to sections 86-2,106 to 86-2,108. For purposes of this section, delivery means (i) handing a copy to the attorney or to the party or (ii) leaving a copy at the attorney's or party's office with a clerk or other person in charge of the office, or if the office is closed or the attorney or party to be served has no office, leaving it at the attorney's or the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) If the court finds that the subscriber or customer has complied with subdivisions (a) and (b) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained or that there is reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained and that there is not reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the subscriber or customer.

**Source:** Laws 1988, LB 899, § 18; R.S.1943, (1999), § 86-707.12; Laws 2002, LB 1105, § 169; Laws 2008, LB1014, § 70.  
Operative date July 18, 2008.

**86-2,108 Electronic communication service; remote computing service; notification requirements.**

(1)(a) A governmental entity acting under subsection (2) of section 86-2,106 shall (i) when a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result or (ii) when an administrative subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(b) For purposes of this section:

(i) Adverse result means:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official means the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a)(ii) of this subsection.

(d) Extensions of the delay of notification provided in sections 86-2,106 and 86-2,107 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, the governmental entity shall serve upon or deliver by registered or first-class mail to the customer or subscriber a copy of the process or request together with notice that:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

(A) That information maintained for such customer or subscriber by the provider named in such process or request was supplied to or requested by that governmental entity and the date on which the supplying or request took place;

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) Which provision of sections 86-2,104 to 86-2,109 allowed such delay.

(2) A governmental entity acting under section 86-2,106, when it is not required to notify the subscriber or customer under subdivision (2)(a) of section 86-2,106 or to the extent that it may delay such notice pursuant to subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

**Source:** Laws 1988, LB 899, § 19; R.S.1943, (1999), § 86-707.13; Laws 2002, LB 1105, § 170.

**86-2,109 Electronic communication service; remote computing service; reimbursement for costs; when.**

(1) Except as otherwise provided in subsection (3) of this section, a governmental entity obtaining the contents of communications, records, or other information under sections 86-2,104 to 86-2,110 shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(2) The amount of the fee provided by subsection (1) of this section shall be as mutually agreed by the governmental entity and the person or entity providing the information or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information or the court before which a criminal prosecution relating to such information would be brought if no court order was issued for production of the information.

(3) The requirement of subsection (1) of this section shall not apply with respect to records or other information maintained by a provider that relate to telephone toll records and telephone listings obtained under section 86-2,106. The court may, however, order a payment as described in subsection (1) of this

section if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

**Source:** Laws 1988, LB 899, § 20; R.S.1943, (1999), § 86-707.14; Laws 2002, LB 1105, § 171.

**86-2,110 Electronic communication service; remote computing service; civil action authorized; damages; limitation.**

(1) Except as provided in subsection (5) of section 86-2,106, any provider, subscriber, or customer aggrieved by any violation of sections 86-2,104 to 86-2,110 in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(2) In a civil action under this section, appropriate relief includes:

(a) Such preliminary and other equitable or declaratory relief as may be appropriate;

(b) Damages under subsection (3) of this section; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of one thousand dollars.

(4) A good faith reliance on (a) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization, (b) a request of an investigative or law enforcement officer under section 86-293, or (c) a good faith determination that section 86-290 permitted the conduct complained of shall be a complete defense to any civil or criminal action brought under sections 86-2,104 to 86-2,110.

(5) A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

**Source:** Laws 1988, LB 899, § 21; R.S.1943, (1999), § 86-707.15; Laws 2002, LB 1105, § 172.

**86-2,111 Interception; grand jury procedure.**

(1) If the Attorney General or any county attorney reasonably determines that the testimony of any witness or the production of books, papers, or other evidence by any witness is necessary to the public interest in any proceeding before the grand jury of the district court of the State of Nebraska involving any violation or conspiracy to violate the provisions of subsection (1) of section 86-290 or involving the offenses enumerated in section 86-291, the Attorney General or county attorney, upon the approval of the Attorney General, shall make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section. Upon an order of the court, such witness shall not be excused from testifying or from producing books, papers, or other evidence on the grounds that the testimony or evidence required by him or her may incriminate him or her or subject him or her to a penalty or forfeiture. Nothing in this section shall be construed to suspend or

otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(2) Except as otherwise provided in this section, no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the witness is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against the witness in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion pursuant to this section.

**Source:** Laws 1976, LB 583, § 2; Laws 1995, LB 13, § 1; R.S.1943, (1999), § 86-708; Laws 2002, LB 1105, § 173.

**Cross References**

Free Flow of Information Act, see section 20-147.

**86-2,112 Attorney General or county attorney; discovery.**

The Attorney General or any county attorney may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records including books, papers, documents, and tangible things which constitute or contain evidence relevant or material to the investigation or enforcement of the laws of this state when it reasonably appears that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska. Witnesses summoned by the Attorney General or a county attorney shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

**Source:** Laws 1976, LB 583, § 3; Laws 1981, LB 204, § 221; R.S.1943, (1999), § 86-709; Laws 2002, LB 1105, § 174; Laws 2008, LB952, § 2.  
Effective date July 18, 2008.

**86-2,113 Interception; subpoena.**

A subpoena of the Attorney General or a county attorney may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign corporation, upon a partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

**Source:** Laws 1976, LB 583, § 4; Laws 1993, LB 121, § 553; R.S.1943, (1999), § 86-710; Laws 2002, LB 1105, § 175.

**86-2,114 Interception; subpoena; enforcement.**

(1) If any person refuses to obey a subpoena issued to such person, the Attorney General or a county attorney may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried

on or of which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(2) The court may issue an order requiring the subpoenaed person to appear before the Attorney General or a county attorney to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the provisions of the Free Flow of Information Act or sections 27-503 to 27-506 and 27-605.

(3) Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant or may otherwise be found.

**Source:** Laws 1976, LB 583, § 5; Laws 1995, LB 13, § 2; R.S.1943, (1999), § 86-711; Laws 2002, LB 1105, § 176.

#### Cross References

Free Flow of Information Act, see section 20-147.

### **86-2,115 Interception; use as evidence.**

No part of the contents of any intercepted wire or oral communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of sections 86-271 to 86-2,115.

**Source:** Laws 1976, LB 583, § 6; R.S.1943, (1999), § 86-712; Laws 2002, LB 1105, § 177.

The discovery of "harp sheets" by the Department of Correctional Services during an independent, administratively inspired inventory of a parole officer's state-owned car was sufficiently independent and distinguishable from an illegal police wiretap of the parole officer's phone to purge the "harp sheets" from any taint arising from the wiretap. The "harp sheets" were not

evidence derived from an unlawful police wiretap. *State v. Gallagher*, 214 Neb. 487, 334 N.W.2d 458 (1983).

The subject of an illegal wiretap may testify at a criminal trial if his identity was made known by means other than the illegal wiretap or his decision to testify is voluntary. *State v. Anderson and Hochstein*, 207 Neb. 51, 296 N.W.2d 440 (1980).

## (f) PROHIBITED ACTS AND SERVICES

### **86-2,116 Diversion of service; provisions applicable.**

(1) In addition to any other criminal procedure and penalty provided by law, any person who unlawfully diverts or interferes with telecommunications service may be subject to sections 28-515.01, 28-515.02, 28-519, 28-1311, and 76-2325.01.

(2) In addition to any other civil procedure and remedy provided by law, any person who unlawfully diverts telecommunications service may be subject to actions authorized in sections 25-21,275 to 25-21,278.

**Source:** Laws 2002, LB 1105, § 178.

#### Cross References

Use of party line prohibited, see section 28-1309.

**ARTICLE 3**  
**UNIVERSAL SERVICE**

(a) TELECOMMUNICATIONS RELAY SYSTEM

Section	
86-301.	Act, how cited.
86-302.	Purpose of act.
86-303.	Definitions, where found.
86-304.	Commission, defined.
86-305.	Deaf, defined.
86-306.	Fund, defined.
86-307.	Hard of hearing, defined.
86-308.	Household, defined.
86-309.	Personal telephone service, defined.
86-310.	Specialized telecommunications equipment, defined.
86-311.	Telecommunications relay system, defined.
86-312.	Nebraska Telecommunications Relay System Fund; created; use; investment.
86-313.	Surcharge; amount; hearing; commission; powers and duties.
86-314.	Telecommunications relay system; specialized telecommunications equipment program; requirements; rules and regulations; administrative fine.
86-315.	Special committee; membership.

(b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT

86-316.	Act, how cited.
86-317.	Purpose of act.
86-318.	Definitions, where found.
86-319.	Commission, defined.
86-320.	Fund, defined.
86-320.01.	Telecommunications, defined.
86-321.	Telecommunications Act of 1996, defined.
86-322.	Telecommunications company, defined.
86-323.	Legislature; declaration of policy.
86-324.	Nebraska Telecommunications Universal Service Fund; created; use; investment; commission; powers; administrative fine; transfer to General Fund authorized.
86-325.	Fund; commission; powers and duties.
86-326.	Fund; administrator; duties; telecommunications companies; obligations.
86-327.	Fund; advisory board.
86-328.	Annual public hearing; notice; fund level.
86-329.	Nebraska Telephone Assistance Program; commission; duties.

(a) TELECOMMUNICATIONS RELAY SYSTEM

**86-301 Act, how cited.**

Sections 86-301 to 86-315 shall be known and may be cited as the Telecommunications Relay System Act.

**Source:** Laws 1993, LB 305, § 23; R.S.1943, (1999), § 86-1301; Laws 2002, LB 1105, § 179.

**86-302 Purpose of act.**

The purpose of the Telecommunications Relay System Act is to provide a statewide telecommunications relay system and a statewide voucher program for the provision of specialized telecommunications equipment for qualified deaf, hard of hearing, or speech-impaired persons in Nebraska which enables

them to communicate twenty-four hours per day, seven days per week, with other persons who use conventional telephone systems.

**Source:** Laws 1990, LB 240, § 1; R.S.Supp.,1992, § 86-901; Laws 1993, LB 305, § 24; Laws 1995, LB 146, § 1; Laws 1997, LB 568, § 1; Laws 1999, LB 359, § 4; R.S.1943, (1999), § 86-1302; Laws 2002, LB 1105, § 180.

**86-303 Definitions, where found.**

For purposes of the Telecommunications Relay System Act, the definitions found in sections 86-304 to 86-311 apply.

**Source:** Laws 1990, LB 240, § 2; R.S.Supp.,1992, § 86-902; Laws 1993, LB 305, § 25; Laws 1995, LB 146, § 2; Laws 1999, LB 359, § 5; R.S.1943, (1999), § 86-1303; Laws 2002, LB 1105, § 181.

**86-304 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2002, LB 1105, § 182.

**86-305 Deaf, defined.**

Deaf has the same meaning as in section 71-4720.01.

**Source:** Laws 2002, LB 1105, § 183.

**86-306 Fund, defined.**

Fund means the Nebraska Telecommunications Relay System Fund.

**Source:** Laws 2002, LB 1105, § 184.

**86-307 Hard of hearing, defined.**

Hard of hearing has the same meaning as in section 71-4720.01.

**Source:** Laws 2002, LB 1105, § 185.

**86-308 Household, defined.**

Household means a family unit whose members are related by birth, marriage, or adoption and who share a common living arrangement.

**Source:** Laws 2002, LB 1105, § 186.

**86-309 Personal telephone service, defined.**

Personal telephone service means telephone service located in an individual's room and the telephone service account is in the individual's name.

**Source:** Laws 2002, LB 1105, § 187.

**86-310 Specialized telecommunications equipment, defined.**

Specialized telecommunications equipment means any telecommunications device enabling deaf, hard of hearing, or speech-impaired persons to communicate using conventional telephone systems. Specialized telecommunications equipment includes, but is not limited to, telecommunications devices for the deaf, signaling devices, and amplification devices.

**Source:** Laws 2002, LB 1105, § 188.

**86-311 Telecommunications relay system, defined.**

Telecommunications relay system means a service permitting full and simultaneous communication between deaf, hard of hearing, or speech-impaired persons using specialized telecommunications equipment and other persons using conventional telephone equipment.

**Source:** Laws 2002, LB 1105, § 189.

**86-312 Nebraska Telecommunications Relay System Fund; created; use; investment.**

(1) The Nebraska Telecommunications Relay System Fund is created. The fund shall be used to provide a statewide telecommunications relay system and to administer a statewide voucher program to provide specialized telecommunications equipment to qualified deaf, hard of hearing, and speech-impaired persons in Nebraska.

(2) Based upon the price of the equipment, vouchers shall be issued by the program administrator to pay private vendors for all or part of the cost of the equipment. After purchase, the recipient is the owner of the equipment and responsible for enforcement of any warranties and repairs.

(3) Any money in the 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.

**Source:** Laws 1990, LB 240, § 3; R.S.Supp., 1992, § 86-903; Laws 1993, LB 305, § 26; Laws 1994, LB 1066, § 141; Laws 1995, LB 146, § 3; Laws 1997, LB 568, § 2; Laws 1999, LB 359, § 6; R.S. 1943, (1999), § 86-1304; Laws 2002, LB 1105, § 190.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**86-313 Surcharge; amount; hearing; commission; powers and duties.**

(1)(a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone number or functional equivalent in Nebraska, including wireless service as defined in section 86-456.01. Except for wireless service, the surcharge shall only be collected on the first one hundred telephone numbers or functional equivalents per subscriber. The companies shall add the surcharge to each subscriber's bill.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber.

(2) Before April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on July 1 following the change.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) The proceeds from the surcharge shall be remitted to the commission monthly no later than thirty days after the end of the month in which they were collected together with forms provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any company collecting the surcharge pursuant to the act.

(6) This section shall not apply to subscribers who have no access to relay service.

**Source:** Laws 1990, LB 240, § 4; R.S.Supp.,1992, § 86-904; Laws 1993, LB 305, § 27; Laws 1995, LB 146, § 4; R.S.1943, (1999), § 86-1305; Laws 2002, LB 1105, § 191; Laws 2003, LB 187, § 28; Laws 2007, LB661, § 3.

**86-314 Telecommunications relay system; specialized telecommunications equipment program; requirements; rules and regulations; administrative fine.**

(1) The commission shall establish standards, procedures, and training specifications for the telecommunications relay system and shall supervise its operation. The telecommunications relay system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, to all deaf, hard of hearing, or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment. Any person using the telecommunications relay system shall not be charged for access to such system other than charges billed for instate and out-of-state long-distance telephone service. The telecommunications relay system shall at least provide the following telephone services: (a) Statewide instate calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (b) out-of-state calls with charges billed to the person making the call; and (c) emergency calls.

(2) The commission shall establish standards and criteria and shall determine the eligibility of qualified deaf, hard of hearing, and speech-impaired persons applying for specialized telecommunications equipment. The eligible standards and criteria shall include the following: (a) Only one person per household may be a recipient of the telecommunications equipment; (b) an applicant shall reside in a household that has telephone service; (c) a recipient of equipment may not reapply for assistance more than once every five years; and (d) a nursing home or institution resident is eligible for specialized telecommunications equipment only if he or she has personal telephone service.

(3) The commission may approve applications for specialized telecommunications equipment if they meet the guidelines established by the commission.

(4) The commission shall adopt and promulgate rules and regulations necessary for implementation of the Telecommunications Relay System Act and guidelines for the specialized telecommunications equipment program. The commission may enter into contracts with other agencies or private organizations, which may include the Commission for the Deaf and Hard of Hearing, to operate the telecommunications relay system and the specialized telecommunications equipment program.

(5) The Public Service Commission may administratively fine pursuant to section 75-156 any person who violates the act.

**Source:** Laws 1990, LB 240, § 5; R.S.Supp.,1992, § 86-905; Laws 1993, LB 305, § 28; Laws 1995, LB 146, § 5; Laws 1997, LB 851, § 27; Laws 1999, LB 359, § 7; Laws 2000, LB 1285, § 22; R.S.Supp.,2000, § 86-1306; Laws 2002, LB 1105, § 192.

**86-315 Special committee; membership.**

The commission shall administer the Telecommunications Relay System Act with the advice of a special committee appointed by the Commission for the Deaf and Hard of Hearing. The special committee shall consist of seven members as follows: One member shall be a deaf person; one member shall be a deaf or hard of hearing person; one member shall be a speech-impaired person; one member shall represent the Public Service Commission; one member shall represent the telephone industry; one member shall represent the Commission for the Deaf and Hard of Hearing; and one member shall represent the public.

**Source:** Laws 1990, LB 240, § 6; R.S.Supp.,1992, § 86-906; Laws 1993, LB 305, § 29; Laws 1997, LB 851, § 28; Laws 1999, LB 359, § 8; R.S.1943, (1999), § 86-1307; Laws 2002, LB 1105, § 193.

(b) NEBRASKA TELECOMMUNICATIONS  
UNIVERSAL SERVICE FUND ACT

**86-316 Act, how cited.**

Sections 86-316 to 86-329 shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

**Source:** Laws 1997, LB 686, § 1; Laws 1999, LB 514, § 4; R.S.1943, (1999), § 86-1401; Laws 2002, LB 1105, § 194; Laws 2007, LB661, § 4.

**86-317 Purpose of act.**

The purpose of the Nebraska Telecommunications Universal Service Fund Act is to authorize the commission to establish a funding mechanism which supplements federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.

**Source:** Laws 1997, LB 686, § 2; R.S.1943, (1999), § 86-1402; Laws 2002, LB 1105, § 195.

**86-318 Definitions, where found.**

For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 apply.

**Source:** Laws 1997, LB 686, § 3; Laws 2001, LB 389, § 3; R.S.Supp.,2001, § 86-1403; Laws 2002, LB 1105, § 196; Laws 2007, LB661, § 5.

**86-319 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2002, LB 1105, § 197.

**86-320 Fund, defined.**

Fund means the Nebraska Telecommunications Universal Service Fund.

**Source:** Laws 2002, LB 1105, § 198.

**86-320.01 Telecommunications, defined.**

Telecommunications means the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

**Source:** Laws 2007, LB661, § 6.

**86-321 Telecommunications Act of 1996, defined.**

Telecommunications Act of 1996 means the federal telecommunications legislation enacted as Public Law 104-104, as such law existed on January 1, 2002.

**Source:** Laws 2002, LB 1105, § 199.

**86-322 Telecommunications company, defined.**

Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association providing telecommunications or telecommunications service for hire in Nebraska without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

**Source:** Laws 2002, LB 1105, § 200; Laws 2007, LB661, § 7.

**86-323 Legislature; declaration of policy.**

The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible

telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.

**Source:** Laws 1997, LB 686, § 4; R.S.1943, (1999), § 86-1404; Laws 2002, LB 1105, § 201; Laws 2007, LB661, § 8.

**86-324 Nebraska Telecommunications Universal Service Fund; created; use; investment; commission; powers; administrative fine; transfer to General Fund authorized.**

(1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the act.

(2) Notwithstanding the provisions of section 86-124, in addition to other provisions of the act, and to the extent not prohibited by federal law, the commission:

(a) Shall have authority and power to subject eligible telecommunications companies to service quality, customer service, and billing regulations. Such regulations shall apply only to the extent of any telecommunications services or offerings made by an eligible telecommunications company which are eligible for support by the fund. The commission shall be reimbursed from the fund for all costs related to drafting, implementing, and enforcing the regulations and any other services provided on behalf of customers pursuant to this subdivision;

(b) Shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders or regulations adopted pursuant to the act;

(c) May withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with the commission's orders or regulations;

(d) Shall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law. The commission shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant to insure the billing, collection, and remittance of a surcharge for universal service. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited;

(e) Shall require an audit of information provided by a telecommunications company to be performed by a third-party certified public accountant for purposes of calculating universal service fund payments to such telecommunications company. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited; and

(f) May administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

(3) Any money in the 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.

(4)(a) The State Treasurer shall transfer funds from the Nebraska Telecommunications Universal Service Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balances in the General Fund and the Cash Reserve Fund are inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred which shall not exceed the amount by which the General Fund and Cash Reserve Fund are inadequate to meet current obligations. The total of such transfers shall not reduce the Nebraska Telecommunications Universal Service Fund balance below an amount sufficient to meet the obligations on the fund for the next sixty days. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available or on June 30, 2007, whichever occurs first.

(b) Any transfer under this subsection not reversed within thirty days after the initial transfer shall accrue interest in the amount of five percent annually. Interest shall be calculated beginning on the thirty-first day after the initial transfer and continue until the transfer is completely reversed. The interest calculated shall be credited to the Nebraska Telecommunications Universal Service Fund.

(c) Any transfer of funds which has not been reversed as provided in this subsection, with accrued interest, shall be considered an encumbrance against the General Fund.

(d) This subsection terminates on June 30, 2007.

**Source:** Laws 1997, LB 686, § 5; Laws 1999, LB 514, § 5; Laws 2000, LB 1285, § 23; Laws 2001, LB 389, § 4; R.S.Supp., 2001, § 86-1405; Laws 2002, LB 1105, § 202; Laws 2002, LB 1211, § 13; Laws 2002, Second Spec. Sess., LB 37, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**86-325 Fund; commission; powers and duties.**

The commission shall determine the standards and procedures reasonably necessary, adopt and promulgate rules and regulations as reasonably required, and enter into such contracts with other agencies or private organizations or entities as may be reasonably necessary to efficiently develop, implement, and operate the fund.

**Source:** Laws 1997, LB 686, § 6; R.S.1943, (1999), § 86-1406; Laws 2002, LB 1105, § 203.

Nothing in this section requires the Public Service Commission to engage in rulemaking to interpret federal law in conjunction with the administration of the Nebraska Telecommunications Universal Service Fund. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

**86-326 Fund; administrator; duties; telecommunications companies; obligations.**

The fund may be administered by a neutral third-party administrator. The commission shall oversee the preparation and selection process of the administrator through a request for proposal process established by the commission. If a third-party administrator is selected, the administrator shall serve at the will of the commission. The administrator shall: Gather the necessary data to estimate fund obligations; notify telecommunications companies of their obligations to the fund; collect and distribute money from the fund in accordance with the Nebraska Telecommunications Universal Service Fund Act and the rules and regulations established by the commission; and notify the commission of any violations of the act and rules and regulations by telecommunications companies with respect to the fund. The commission shall audit the administrator to ensure the duties are being performed in accordance with the act and its rules and regulations. Any telecommunications company not meeting its obligation to the fund shall not be eligible to receive payments from the fund, shall be subject to administrative penalties to be determined by the commission, and shall be subject to the revocation of any certificate or permit issued pursuant to section 86-128 or any predecessor statute.

**Source:** Laws 1997, LB 686, § 7; Laws 1999, LB 150, § 15; R.S.1943, (1999), § 86-1407; Laws 2002, LB 1105, § 204.

**86-327 Fund; advisory board.**

The commission shall oversee and the administrator, if a third-party administrator is selected, shall administer the fund with the advice of an advisory board appointed by the commission.

The number of members on such advisory board shall be not less than seven nor more than nine members. The composition of the membership of the advisory board shall be determined by the commission and shall include the following representatives: One member shall represent the commission; one member shall represent elementary and secondary schools; one member shall represent libraries; one member shall represent rural health care providers; two members, but not more than three members, shall represent telecommunications companies; and one member, but not more than two members, shall represent the public.

The advisory board shall provide recommendations to the commission at the public hearing held pursuant to the Open Meetings Act. The advisory board

shall also, on an annual basis, recommend the services to be supported by the fund.

**Source:** Laws 1997, LB 686, § 8; R.S.1943, (1999), § 86-1408; Laws 2002, LB 1105, § 205; Laws 2004, LB 821, § 44.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**86-328 Annual public hearing; notice; fund level.**

(1) Annually the commission shall hold a public hearing to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act. The commission shall publish notice of the hearing in at least one newspaper of general circulation in the state at least once each week for two consecutive weeks before the hearing. After the hearing, the commission shall determine the amount of the fund for the following year, including a reasonable reserve. In the initial year of the fund's operation, the commission shall determine the amount of the fund to be equivalent to the amount which, in the commission's judgment, after careful analysis, is necessary to keep approximately ninety-six percent of Nebraska households subscribed to local telecommunications service.

(2) In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

**Source:** Laws 1997, LB 686, § 9; R.S.1943, (1999), § 86-1409; Laws 2002, LB 1105, § 206.

**Cross References**

**Annual report to Legislature**, see section 86-163.

**86-329 Nebraska Telephone Assistance Program; commission; duties.**

(1) The commission shall establish the Nebraska Telephone Assistance Program. The purpose of the Nebraska Telephone Assistance Program is to promote the provision of universal service to low-income households by local exchange carriers. Support provided by the program shall be specifically targeted to maintain affordable rates for residential basic local exchange services supported by federal and state universal service mechanisms. The commission shall establish means-tested eligibility guidelines and standards for the provision of support from the program which are consistent with the Telecommunications Act of 1996 and 47 C.F.R. 54.400 through 54.409, as such act and regulations existed on January 1, 2002.

(2) Any local exchange carrier receiving state universal service support shall be prohibited from disconnecting the basic local exchange service of any customer receiving low-income support from the program for the nonpayment of any interexchange toll service charges. The commission may grant limited waivers of this requirement in a manner consistent with 47 C.F.R. 54.400 through 54.409, as such regulations existed on January 1, 2002.

(3) Any person receiving low-income support from the program shall be exempt from the payment of any surcharge established by the commission pursuant to the Nebraska Telecommunications Universal Service Fund Act.

**Source:** Laws 1997, LB 686, § 10; Laws 1999, LB 514, § 6; R.S.1943, (1999), § 86-1410; Laws 2002, LB 1105, § 207; Laws 2004, LB 1004, § 2.

**PUBLIC SAFETY SYSTEMS**

**ARTICLE 4**

**PUBLIC SAFETY SYSTEMS**

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

Section	
86-401.	Act, how cited.
86-402.	Legislative findings.
86-403.	Definitions, where found.
86-404.	Repealed. Laws 2005, LB 343, § 13.
86-405.	Repealed. Laws 2005, LB 343, § 13.
86-406.	Repealed. Laws 2005, LB 343, § 13.
86-407.	Division, defined.
86-408.	Public safety agency, defined.
86-409.	Repealed. Laws 2005, LB 343, § 13.
86-410.	Repealed. Laws 2005, LB 343, § 13.
86-411.	Repealed. Laws 2005, LB 343, § 13.
86-412.	Repealed. Laws 2005, LB 343, § 13.
86-413.	Repealed. Laws 2005, LB 343, § 13.
86-414.	Repealed. Laws 2005, LB 343, § 13.
86-415.	Repealed. Laws 2005, LB 343, § 13.
86-416.	Service agreement provisions; special tax; procedure.
86-417.	Repealed. Laws 2006, LB 1061, § 29.
86-417.01.	Repealed. Laws 2007, LB 322, § 42.
86-417.02.	Repealed. Laws 2007, LB 322, § 42.
86-418.	Standards; incentives.
86-418.01.	Regional Interoperability Advisory Board; created; duty; members; expenses.
86-419.	Repealed. Laws 2005, LB 343, § 13.

(b) EMERGENCY TELEPHONE COMMUNICATIONS SYSTEMS

86-420.	Act, how cited.
86-421.	Legislative findings.
86-422.	Definitions, where found.
86-423.	Automatic location identification, defined.
86-424.	Automatic number identification, defined.
86-425.	E-911 service or enhanced-911 service, defined.
86-426.	Governing body, defined.
86-427.	Repealed. Laws 2007, LB 661, § 30.
86-428.	911 service, defined.
86-429.	911 service area, defined.
86-429.01.	Primary place of use, defined.
86-430.	Public safety agency, defined.
86-431.	Public safety answering point, defined.
86-432.	Service supplier, defined.
86-433.	Service surcharge, defined.
86-434.	Service user, defined.
86-435.	911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use.
86-436.	Surcharges; service user; service supplier; duties; collection.
86-437.	Service supplier; surcharges; remittance; record; audit; report; commission; duties; administrative fine.
86-438.	Surcharge; rate; establishment.
86-439.	Surcharges; separate fund; use.
86-440.	Governing body; agreements authorized.
86-440.01.	County implementation of enhanced-911 service.
86-441.	911 service; immunity from liability.
86-441.01.	Federal or other funds; Public Service Commission; powers; immunity.

(c) ENHANCED WIRELESS 911 SERVICES

86-442.	Act, how cited.
86-443.	Definitions, where found.

## Section

- 86-443.01. Repealed. Laws 2007, LB 661, § 30.
- 86-444. Advisory board, defined.
- 86-445. Automatic number identification, defined.
- 86-446. Commission, defined.
- 86-447. E-911 service, defined.
- 86-448. Enhanced wireless 911 service, defined.
- 86-449. Governing body, defined.
- 86-449.01. Home service provider, defined.
- 86-450. 911 service, defined.
- 86-450.01. Repealed. Laws 2007, LB 661, § 30.
- 86-450.02. Prepaid wireless service, defined.
- 86-450.03. Primary place of use, defined.
- 86-451. Pseudo-automatic number identification, defined.
- 86-452. Public safety agency, defined.
- 86-453. Public safety answering point, defined.
- 86-454. Ten-digit telephone number, defined.
- 86-455. Wireless automatic location identification, defined.
- 86-456. Wireless carrier, defined.
- 86-456.01. Wireless service, defined.
- 86-457. Surcharge; commission; duties; applicability of section.
- 86-458. Public hearing; commission; duties.
- 86-459. Wireless carrier; duties; administrative fine.
- 86-460. Public safety answering point; report.
- 86-461. Enhanced Wireless 911 Advisory Board; created; members; expenses.
- 86-462. Advisory board; duties.
- 86-463. Enhanced Wireless 911 Fund; created; use; investment.
- 86-464. Service agreement; authorized.
- 86-465. Commission; advisory board; duties.
- 86-466. Compensation for costs.
- 86-466.01. County without enhanced wireless 911 service; commission; powers.
- 86-467. Confidential information.
- 86-468. Immunity.
- 86-469. Rules and regulations.
- 86-470. Civil penalty.

## (a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

**86-401 Act, how cited.**

Sections 86-401 to 86-418.01 shall be known and may be cited as the Nebraska Public Safety Communication System Act.

**Source:** Laws 1999, LB 446, § 1; R.S.1943, (1999), § 86-1803; Laws 2002, LB 1105, § 208; Laws 2002, LB 1211, § 14; Laws 2005, LB 343, § 2; Laws 2006, LB 1061, § 14.

**86-402 Legislative findings.**

The Legislature finds that:

- (1) During emergencies the resources of the state and its political subdivisions must be effectively directed to save lives, to protect property, and to meet the needs of its citizens;
- (2) Public safety agencies fulfill this unique and essential role;
- (3) Public safety agencies are only as effective as their ability to communicate. To adequately ensure public safety, such agencies require efficient, reliable communication systems which account for their unique role and the specialized needs that accompany such role;

(4) There are presently radio communication systems used by public safety agencies during daily operations and emergencies that are deficient. Many of Nebraska's systems rely on inadequate equipment, are susceptible to communication interference, have limited coverage areas, operate under the constraints of a limited number of radio frequency channels, and lack coordination and the ability to interoperate among city, county, and other local users, state users, and federal users. Additionally, such systems presently do not allow for secure transmissions which are necessary for the protection and integrity of public safety communications;

(5) Recent changes and advances in communication technology would increase the capability of public safety agencies to provide efficient and effective public safety services;

(6) Investment in the public safety communication infrastructure is required to ensure the effectiveness of Nebraska's public safety agencies;

(7) Regional approaches to communications planning and preparedness and the adoption of regional response structures should be used to develop and sustain interoperable communications. Local and state public safety agencies shall develop a comprehensive interoperable communications plan before receiving any state or federal funding to build, upgrade, enhance, or replace communication systems; and

(8) A network of regional communication systems should balance the need for multiple simultaneous users while maintaining autonomy for the internal use of individual agencies. The objectives of such a network should include maximizing resources and reducing duplication among public safety agencies as well as encouraging cooperation, coordination, consolidation, sharing, and partnerships between public agencies and private entities.

**Source:** Laws 1999, LB 446, § 2; R.S.1943, (1999), § 86-1804; Laws 2002, LB 1105, § 209; Laws 2002, LB 1211, § 15; Laws 2005, LB 343, § 3.

#### **86-403 Definitions, where found.**

For purposes of the Nebraska Public Safety Communication System Act, the definitions found in sections 86-407 and 86-408 apply.

**Source:** Laws 1999, LB 446, § 3; R.S.1943, (1999), § 86-1805; Laws 2002, LB 1105, § 210; Laws 2002, LB 1211, § 16; Laws 2005, LB 343, § 4.

**86-404 Repealed. Laws 2005, LB 343, § 13.**

**86-405 Repealed. Laws 2005, LB 343, § 13.**

**86-406 Repealed. Laws 2005, LB 343, § 13.**

#### **86-407 Division, defined.**

Division means the division of communications of the office of Chief Information Officer.

**Source:** Laws 2002, LB 1105, § 212; Laws 2006, LB 921, § 13.

#### **86-408 Public safety agency, defined.**

Public safety agency means any federal, state, or political subdivision entity which provides emergency and public safety services, including medical services, law enforcement services, fire management services, correctional services, and emergency and disaster relief services.

**Source:** Laws 2002, LB 1105, § 213.

**86-409 Repealed. Laws 2005, LB 343, § 13.**

**86-410 Repealed. Laws 2005, LB 343, § 13.**

**86-411 Repealed. Laws 2005, LB 343, § 13.**

**86-412 Repealed. Laws 2005, LB 343, § 13.**

**86-413 Repealed. Laws 2005, LB 343, § 13.**

**86-414 Repealed. Laws 2005, LB 343, § 13.**

**86-415 Repealed. Laws 2005, LB 343, § 13.**

**86-416 Service agreement provisions; special tax; procedure.**

(1) Notwithstanding any other provision of Nebraska law, any city, county, village, public power district, or fire protection district may enter into a service agreement with any joint entity created pursuant to the Interlocal Cooperation Act or any joint public agency created pursuant to the Joint Public Agency Act which owns or operates or proposes to own or operate any public safety communication project for obtaining communication services, including the use or right to use real or personal property included in any such project. This subsection shall not be construed to authorize any service agreements that conflict with the provisions for the sale or lease of dark fiber pursuant to sections 86-574 to 86-578.

(2) Any such service agreement may provide for the following:

(a) The payment of fixed or variable periodic amounts for service or the right to obtain service, including the use or right to use real or personal property;

(b) That such service agreement may extend for a term of years as determined by the governing body of the city, county, village, public power district, or fire protection district and be binding upon such city, county, village, public power district, or fire protection district over such term of years;

(c) That fixed or variable periodic amounts payable may be determined based upon any of the following factors:

(i) Operating, maintenance, and management expenses, including renewals and replacements for facilities and equipment;

(ii) Amounts payable with respect to debt service on bonds or other obligations, including margins of coverage if deemed appropriate; and

(iii) Amounts necessary to build or maintain operating reserves, capital reserves, and debt service reserves;

(d) That any such service agreement may require payment to be made in the agreed fixed or variable periodic amounts irrespective of whether such public safety communication project or regional communication system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such project or system; and

(e) Such other provisions as the parties to the service agreement deem appropriate in connection with providing and obtaining public safety communication service, including the acquisition of real and personal property, the construction of facilities, and the operation, maintenance, and management of services, property, and facilities.

(3) In order to provide for the payments due under such service agreement:

(a) Any city, county, village, or fire protection district may provide that payments may be made from a special tax levied for such purpose upon all taxable property within such city, county, village, or fire protection district, if determined appropriate by the governing body by a vote of three-fourths of the members of the governing body, if there are four or more members of such body, or by a vote of two-thirds of the members of the governing body, if there are less than four members of such body. The special tax shall for all purposes of Nebraska law, including limitations upon tax levies, budgets, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such city, county, village, or fire protection district; and

(b) Any public power district may pledge the revenue of the district, subject to any existing pledges made for bonded indebtedness or borrowings from the United States or any other party and existing conditions relating to issuance of additional bonds or other indebtedness, and, if deemed appropriate by the governing body, the service agreement may have the status of revenue bond indebtedness issued pursuant to sections 70-631 to 70-635.

**Source:** Laws 2002, LB 1211, § 23; Laws 2005, LB 343, § 5.

Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**86-417 Repealed. Laws 2006, LB 1061, § 29.**

**86-417.01 Repealed. Laws 2007, LB 322, § 42.**

**86-417.02 Repealed. Laws 2007, LB 322, § 42.**

**86-418 Standards; incentives.**

The division shall develop and adopt technical and operational standards for any communication system acquired, developed, constructed, or replaced by any state agency or any city, county, village, public power district, fire protection district, or other political subdivision, including joint entities and joint public agencies created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. The division shall develop incentives to encourage regional cooperation in public safety communication throughout the state. The division shall assist local communities and public safety agencies which desire to connect with a network of regional communication systems. Incentive alternatives may include financial incentives to encourage migration by communities to the network and to reward communities which coordinate efforts to form public safety communication centers. Such incentives shall not mandate migration by public safety agencies to the network.

**Source:** Laws 1999, LB 446, § 7; R.S.1943, (1999), § 86-1809; Laws 2002, LB 1105, § 218; Laws 2005, LB 343, § 7.

## Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

**86-418.01 Regional Interoperability Advisory Board; created; duty; members; expenses.**

(1) The Regional Interoperability Advisory Board is created. The board shall provide advice to the division regarding the formation, expansion, and enhancement of regional communication systems to achieve interoperability. For administrative and budgetary purposes, the board shall be within the division. The division shall provide office space, equipment, technical assistance, and staff support for the board.

(2) The advisory board shall consist of the following members, all of whom shall be individuals with knowledge of the communications needs of their represented constituency:

- (a) A representative of the division;
- (b) A representative of the Nebraska Emergency Management Agency; and
- (c) Four representatives of regional communication systems.

(3) The members of the advisory board shall be appointed by the Governor. Each member's term shall be for two years from the date of appointment. Members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(4) The advisory board shall terminate on January 1, 2009.

**Source:** Laws 2005, LB 343, § 8; Laws 2006, LB 1061, § 17.

**86-419 Repealed. Laws 2005, LB 343, § 13.**

(b) EMERGENCY TELEPHONE COMMUNICATIONS SYSTEMS

**86-420 Act, how cited.**

Sections 86-420 to 86-441.01 shall be known and may be cited as the Emergency Telephone Communications Systems Act.

**Source:** Laws 2002, LB 1105, § 221; Laws 2005, LB 516, § 1; Laws 2006, LB 1222, § 1; Laws 2007, LB661, § 9.

**86-421 Legislative findings.**

The Legislature finds that 911 emergency telephone communications systems further the public interest and protect the health, safety, and welfare of the people of Nebraska. The purpose of the Emergency Telephone Communications Systems Act is to fund the development, installation, and operation of 911 emergency telephone communications systems throughout the state.

**Source:** Laws 1990, LB 240, § 7; R.S.1943, (1999), § 86-1001; Laws 2002, LB 1105, § 222.

**86-422 Definitions, where found.**

For purposes of the Emergency Telephone Communications Systems Act, the definitions found in sections 86-423 to 86-434 apply.

**Source:** Laws 1990, LB 240, § 8; Laws 1991, LB 133, § 1; Laws 1993, LB 305, § 30; R.S.1943, (1999), § 86-1002; Laws 2002, LB 1105, § 223; Laws 2007, LB661, § 10.

**86-423 Automatic location identification, defined.**

Automatic location identification means a feature by which the name and address associated with the calling party's telephone number is forwarded to the public safety answering point for display. Additional telephones with the same telephone number as the calling party's shall be identified with the address of the telephone number at the main location of the calling party. This feature is available only for E-911 service.

**Source:** Laws 2002, LB 1105, § 224.

**86-424 Automatic number identification, defined.**

Automatic number identification means a feature by which the calling party's automatic number identification telephone number is forwarded to the E-911 control office and to the public safety answering point's display and transfer units. This feature is available only for E-911 service.

**Source:** Laws 2002, LB 1105, § 225.

**86-425 E-911 service or enhanced-911 service, defined.**

E-911 service or enhanced-911 service means a telephone exchange communications service by which one or more public safety answering points designated by the governing body may receive telephone calls dialed to the telephone number 911. E-911 service generally may provide, but is not limited to, selective routing, automatic number identification, and automatic location identification features.

**Source:** Laws 2002, LB 1105, § 226.

**86-426 Governing body, defined.**

Governing body means the county board, the city council of a city, the board of trustees of a village, or the board of directors of any rural or suburban fire protection district.

**Source:** Laws 2002, LB 1105, § 227.

**86-427 Repealed. Laws 2007, LB 661, § 30.****86-428 911 service, defined.**

911 service means a telephone service which provides a service user with the ability to reach a public safety answering point by dialing the digits 911 for the purpose of reporting emergencies. The level of technology to be used for the provision of 911 service in a particular 911 service area shall be determined by the governing bodies having jurisdiction over such 911 service area.

**Source:** Laws 2002, LB 1105, § 229.

**86-429 911 service area, defined.**

911 service area means (1) the portion of a governing body's jurisdiction in which 911 service is provided and (2) an area being provided 911 service by contract with a service supplier on or before January 1, 1990, notwithstanding the crossing of jurisdictional lines, until such time as the noncontracting

governing body notifies the contracting governing body in writing of its intention to opt out of the 911 service area.

**Source:** Laws 2002, LB 1105, § 230.

**86-429.01 Primary place of use, defined.**

Primary place of use means the residential or business street address that is representative of the primary location of the customer's use of a service that includes the provision of 911 service.

**Source:** Laws 2007, LB661, § 11.

**86-430 Public safety agency, defined.**

Public safety agency means an agency which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.

**Source:** Laws 2002, LB 1105, § 231.

**86-431 Public safety answering point, defined.**

Public safety answering point means a twenty-four-hour, local-jurisdiction communications facility which receives 911 service calls and either directly dispatches emergency services or relays calls to the appropriate public safety agency.

**Source:** Laws 2002, LB 1105, § 232.

**86-432 Service supplier, defined.**

Service supplier means any person providing 911 service in this state.

**Source:** Laws 2002, LB 1105, § 233.

**86-433 Service surcharge, defined.**

Service surcharge means a charge set by a governing body and assessed on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's designated 911 service area, with the exception of those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service.

**Source:** Laws 2002, LB 1105, § 234; Laws 2007, LB661, § 12.

**86-434 Service user, defined.**

Service user means any person who is provided 911 service in this state.

**Source:** Laws 2002, LB 1105, § 235; Laws 2007, LB661, § 13.

**86-435 911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use.**

(1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each telephone number or functional equivalent of service users whose

primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after:

(a) Publication of notices for a public hearing. Such notices shall:

(i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected;

(ii) Set forth the time, place, and date of such public hearing; and

(iii) Set forth the purpose of the public hearing and the purpose of the increase; and

(b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911 service through an agreement as provided in the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service, shall be the same as the amount allowed in subsections (1) and (2) of this section.

(5) Funds generated by the service surcharge shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

**Source:** Laws 1990, LB 240, § 9; Laws 1991, LB 133, § 2; Laws 1994, LB 1044, § 1; Laws 1997, LB 37, § 1; R.S.1943, (1999), § 86-1003; Laws 2002, LB 1105, § 236; Laws 2007, LB661, § 14.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.  
**Joint Public Agency Act**, see section 13-2501.

**86-436 Surcharges; service user; service supplier; duties; collection.**

(1) A service user shall pay service surcharges in each 911 service area where the service user has its primary place of use and receives 911 service, except that an individual service user shall not be required to pay on a single periodic billing service surcharges on more than one hundred telephone numbers or functional equivalents in any single 911 service area. Every service user shall be liable for any service surcharge billed to such user until the surcharge has been paid to the service supplier.

(2) The duty of a service supplier to bill a service surcharge to a service user shall commence at such time as may be specified by the governing body. A service surcharge shall be collected as far as practicable at the same time as and along with the charges for service in accordance with the regular billing practice of the service supplier.

(3) A service supplier shall have no obligation to take any legal action to enforce the collection of any service surcharge imposed pursuant to section 86-435. Such action may be brought by or on behalf of the governing body imposing the charge or the separate legal entity formed pursuant to such section. A service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be for nonpayment of any service surcharge. The service supplier shall not be liable for such uncollected amounts.

**Source:** Laws 1990, LB 240, § 10; R.S.1943, (1999), § 86-1004; Laws 2002, LB 1105, § 237; Laws 2007, LB661, § 15.

**86-437 Service supplier; surcharges; remittance; record; audit; report; commission; duties; administrative fine.**

(1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's books and records concerning the collection and remittance of a service surcharge.

(2) On or before April 30 of each year, each service supplier shall report for the preceding calendar year to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the service surcharge, (c) to which governing body the service surcharge is being submitted, and (d) the amount of revenue collected by the service surcharge.

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations necessary to carry out subsections (2) and (3) of this section.

(5) The commission may administratively fine pursuant to section 75-156 any person who violates the Emergency Telephone Communications Systems Act.

**Source:** Laws 1990, LB 240, § 11; Laws 1993, LB 305, § 31; Laws 2000, LB 1285, § 17; R.S.Supp.,2000, § 86-1005; Laws 2002, LB 1105, § 238; Laws 2008, LB755, § 8.  
Effective date March 20, 2008.

Cross References

Annual report to Legislature, see section 86-163.

**86-438 Surcharge; rate; establishment.**

Each calendar year, the governing body shall establish the rate of the service surcharge, not to exceed the amount authorized by section 86-435, that together with any surplus revenue carried forward will produce sufficient revenue to fund the expenditures described in section 86-421. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to the next year. A governing body shall make its determination of the rate no later than September 1 of each year and, if it is a new rate, shall fix the new rate to take effect commencing with the first billing period of each service user on or following the next January 1. The governing body shall notify by certified or registered mail every service supplier of any change in the rate at least ninety days before the new rate becomes effective.

**Source:** Laws 1990, LB 240, § 12; R.S.1943, (1999), § 86-1006; Laws 2002, LB 1105, § 239.

**86-439 Surcharges; separate fund; use.**

Funds collected by a governing body from the imposition of a service surcharge shall be credited to a separate fund apart from the general revenue of the governing body and shall be used solely to pay for costs for 911 service. Any money remaining in the fund at the end of any fiscal year shall remain in the fund for payments during any succeeding year, except that if 911 service is discontinued, money remaining in the fund after payment of all costs related to 911 service have been made shall be transferred to the general fund of the public safety agency or proportionately to the general fund of each participating public safety agency.

**Source:** Laws 1990, LB 240, § 13; R.S.1943, (1999), § 86-1007; Laws 2002, LB 1105, § 240.

**86-440 Governing body; agreements authorized.**

Any governing body authorized to impose a service surcharge may enter into an agreement directly with a service supplier of 911 service or may contract and cooperate with any public safety agency, with other states or their political subdivisions, or with any association or corporation for the administration of 911 service as provided by law.

**Source:** Laws 1990, LB 240, § 14; R.S.1943, (1999), § 86-1008; Laws 2002, LB 1105, § 241.

**86-440.01 County implementation of enhanced-911 service.**

Each county shall implement enhanced-911 service by July 1, 2010.

**Source:** Laws 2006, LB 1222, § 2.

**86-441 911 service; immunity from liability.**

The 911 service described in the Emergency Telephone Communications Systems Act is within the governmental powers and authorities of a governing body or public safety agency. In contracting for such 911 service and in providing such 911 service, except for failure to use reasonable care or for intentional acts, each governing body, public safety agency, and service supplier and their employees and agents shall be immune from liability or the payment for any damages in the performance of installing, maintaining, or providing 911 service.

**Source:** Laws 1990, LB 240, § 15; R.S.1943, (1999), § 86-1009; Laws 2002, LB 1105, § 242.

**86-441.01 Federal or other funds; Public Service Commission; powers; immunity.**

The Public Service Commission may apply for or assist any political subdivision in applying for any federal or other funds available for 911 service or E-911 service and may distribute federal funds consistent with federal law and other funds consistent with the directives, purposes, or conditions of such other funds. Except for intentional acts, the commission shall be immune from liability or the payment of damages in assisting any political subdivision in applying for any such federal funds.

**Source:** Laws 2005, LB 516, § 2.

## (c) ENHANCED WIRELESS 911 SERVICES

**86-442 Act, how cited.**

Sections 86-442 to 86-470 shall be known and may be cited as the Enhanced Wireless 911 Services Act.

**Source:** Laws 2002, LB 1105, § 243; Laws 2003, LB 187, § 29; Laws 2006, LB 1222, § 3; Laws 2007, LB661, § 16.

**86-443 Definitions, where found.**

For purposes of the Enhanced Wireless 911 Services Act, the definitions found in sections 86-444 to 86-456.01 apply.

**Source:** Laws 2001, LB 585, § 1; R.S.Supp.,2001, § 86-2201; Laws 2002, LB 1105, § 244; Laws 2006, LB 1222, § 4; Laws 2007, LB661, § 17.

**86-443.01 Repealed. Laws 2007, LB 661, § 30.****86-444 Advisory board, defined.**

Advisory board means the Enhanced Wireless 911 Advisory Board.

**Source:** Laws 2002, LB 1105, § 245.

**86-445 Automatic number identification, defined.**

Automatic number identification means a feature by which a person calling a public safety answering point has his or her ten-digit telephone number

simultaneously forwarded to the public safety answering point and to the public safety answering point's display and transfer units.

**Source:** Laws 2002, LB 1105, § 246.

**86-446 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2002, LB 1105, § 247.

**86-447 E-911 service, defined.**

E-911 service has the same meaning as in section 86-425.

**Source:** Laws 2002, LB 1105, § 248.

**86-448 Enhanced wireless 911 service, defined.**

Enhanced wireless 911 service means a telephone exchange communications service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification, and wireless automatic location identification information to a public safety answering point which has the capability of providing selective routing, selective transfer, fixed transfer, automatic number identification, and wireless automatic location identification.

**Source:** Laws 2002, LB 1105, § 249.

**86-449 Governing body, defined.**

Governing body has the same meaning as in section 86-426.

**Source:** Laws 2002, LB 1105, § 250.

**86-449.01 Home service provider, defined.**

Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide wireless service.

**Source:** Laws 2007, LB661, § 18.

**86-450 911 service, defined.**

911 service has the same meaning as in section 86-428.

**Source:** Laws 2002, LB 1105, § 251.

**86-450.01 Repealed. Laws 2007, LB 661, § 30.**

**86-450.02 Prepaid wireless service, defined.**

Prepaid wireless service means a wireless service for which the user pays prospectively and for which the wireless carrier does not have an ongoing monthly billing relationship with the user of such service.

**Source:** Laws 2007, LB661, § 19.

**86-450.03 Primary place of use, defined.**

Primary place of use means: (1) For users of wireless service other than prepaid wireless service, the street address representative of where the use of wireless service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the user of

the wireless service and shall be within the service area of the home service provider; and (2) for users of prepaid wireless service, the location associated with the telephone number assigned to the user.

**Source:** Laws 2007, LB661, § 20.

**86-451 Pseudo-automatic number identification, defined.**

Pseudo-automatic number identification means a feature by which automatic number identification is provided to a public safety answering point of the ten-digit telephone number of the specific cell site or cell site sector from which a wireless call originated.

**Source:** Laws 2002, LB 1105, § 252.

**86-452 Public safety agency, defined.**

Public safety agency has the same meaning as in section 86-430.

**Source:** Laws 2002, LB 1105, § 253.

**86-453 Public safety answering point, defined.**

Public safety answering point has the same meaning as section 86-431.

**Source:** Laws 2002, LB 1105, § 254.

**86-454 Ten-digit telephone number, defined.**

Ten-digit telephone number means a telephone number assigned to a particular telephone account prefaced by the area code.

**Source:** Laws 2002, LB 1105, § 255.

**86-455 Wireless automatic location identification, defined.**

Wireless automatic location identification means a feature by which information is provided to a public safety answering point identifying the location, including the latitude and longitude within the parameters established by the Federal Communications Commission, of a wireless unit originating a call to a public safety answering point.

**Source:** Laws 2002, LB 1105, § 256.

**86-456 Wireless carrier, defined.**

Wireless carrier means (1) any carrier of mobile service as referenced in 47 U.S.C. 153(27), as such section existed on January 1, 2007, (2) any carrier of commercial mobile service as referenced in 47 U.S.C. 332(d)(1), as such section existed on January 1, 2007, (3) any carrier of commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007, or (4) any cellular radiotelephone service, licensees of a personal communications service, and specialized mobile radio services as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

**Source:** Laws 2002, LB 1105, § 257; Laws 2006, LB 1222, § 7; Laws 2007, LB661, § 21.

**86-456.01 Wireless service, defined.**

Wireless service means: (1) Any mobile service as defined in 47 U.S.C. 153 and 47 C.F.R. 27.4, as such section and regulation existed on January 1, 2007; (2) any commercial mobile service as defined in 47 U.S.C. 332(d), as such section existed on January 1, 2007; or (3) any commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

**Source:** Laws 2007, LB661, § 22.

**86-457 Surcharge; commission; duties; applicability of section.**

(1) Each wireless carrier shall collect:

(a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection and as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service and shall remit the surcharge in accordance with section 86-459; or

(b) A surcharge of up to fifty cents, except as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service whose primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459.

The wireless carrier is not liable for any surcharge not paid by a customer.

(2) Except as otherwise provided in this section, the wireless carrier shall add the surcharge to each user's billing statement. The surcharge shall appear as a separate line-item charge on the user's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase.

(3) If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.

(4) It is the intent of the Legislature that, effective July 1, 2007, all users of prepaid wireless services pay an amount comparable to the amount paid by users of wireless services that are not prepaid in support of statewide wireless enhanced 911 service. It is also the intent of the Legislature that whenever possible such amounts be collected from the users of such prepaid wireless services.

(5) The commission shall establish surcharges comparable to the surcharge assessed on other users of wireless services and shall develop methods for collection and remittance of such surcharges from wireless carriers offering prepaid wireless services.

(6) The duty to remit any surcharges established pursuant to subsection (5) of this section is the responsibility of the wireless carrier.

(7) This section shall not apply to users who have no 911 service.

**Source:** Laws 2001, LB 585, § 2; R.S.Supp.,2001, § 86-2202; Laws 2002, LB 1105, § 258; Laws 2003, LB 187, § 31; Laws 2006, LB 1222, § 8; Laws 2007, LB661, § 23.

**86-458 Public hearing; commission; duties.**

The commission shall hold a public hearing annually to determine the amount of revenue necessary to carry out the Enhanced Wireless 911 Services

Act. After the hearing, the commission shall determine the amount of money to be deposited in the Enhanced Wireless 911 Fund for the following year and shall set the surcharge subject to the limitation in section 86-457.

**Source:** Laws 2001, LB 585, § 3; R.S.Supp.,2001, § 86-2203; Laws 2002, LB 1105, § 259.

**86-459 Wireless carrier; duties; administrative fine.**

(1) Each wireless carrier shall remit monthly to the commission the amounts collected pursuant to section 86-457 together with any forms required by the commission no later than sixty days after the last day of the month. The commission shall remit the funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund.

(2) As the commission may require, each wireless carrier, except a wireless carrier whose users have no 911 service, shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of telephone numbers or functional equivalents served; (b) the number of telephone numbers or functional equivalents from which it has collected surcharge revenue; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of five years after the date of remittance to the fund. The commission may require an audit of any wireless carrier's books and records concerning the collection and remittance of any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

**Source:** Laws 2001, LB 585, § 4; R.S.Supp.,2001, § 86-2204; Laws 2002, LB 1105, § 260; Laws 2006, LB 1222, § 9; Laws 2007, LB661, § 24; Laws 2008, LB755, § 9.  
Effective date March 20, 2008.

**86-460 Public safety answering point; report.**

(1) Each public safety answering point shall report to the commission annually (a) the name and location of the public safety answering point and (b) whether wireless 911 service or enhanced wireless 911 service is provided at that public safety answering point.

(2) The commission shall compile and place the information required in this section into its annual telecommunications report to the Legislature.

**Source:** Laws 2001, LB 585, § 5; R.S.Supp.,2001, § 86-2205; Laws 2002, LB 1105, § 261.

**Cross References**

Annual report to Legislature, see section 86-163.

**86-461 Enhanced Wireless 911 Advisory Board; created; members; expenses.**

(1) The Enhanced Wireless 911 Advisory Board is created to advise the commission concerning the implementation, development, administration, coordination, evaluation, and maintenance of enhanced wireless 911 service. The advisory board shall be composed of nine individuals appointed by the Governor, including:

- (a) One sheriff;
- (b) Two county officials or employees;
- (c) Two municipal officials or employees;
- (d) One representative from the state's wireless telecommunications industry;
- (e) One manager of a public safety answering point not employed by a sheriff;
- (f) One representative of the state's local exchange telecommunications service industry; and
- (g) One member of the public.

(2) The advisory board shall also include two ex officio members:

- (a) One commissioner from the Public Service Commission or his or her designee; and
- (b) The Chief Information Officer or his or her designee.

(3) Members of the board as described in subdivisions (1)(a) through (1)(g) of this section shall be appointed for a term of three years. Each succeeding member of the board shall be appointed for a term of three years. The board shall meet as often as necessary to carry out its duties. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2001, LB 585, § 6; R.S.Supp.,2001, § 86-2206; Laws 2002, LB 1105, § 262; Laws 2006, LB 921, § 14; Laws 2007, LB661, § 25.

**86-462 Advisory board; duties.**

(1) The advisory board shall make recommendations to the commission regarding the implementation of the Enhanced Wireless 911 Services Act, including:

- (a) The allocation of funds from the Enhanced Wireless 911 Fund as specified in section 86-465;
- (b) Rules and regulations necessary to carry out the act;
- (c) Any adjustments in the surcharge amount to recommend to the Legislature; and

(d) The resolution of any disputes between public safety answering points and wireless carriers.

(2) The commission may approve and implement any recommendations of the advisory board.

**Source:** Laws 2001, LB 585, § 7; R.S.Supp.,2001, § 86-2207; Laws 2002, LB 1105, § 263.

**86-463 Enhanced Wireless 911 Fund; created; use; investment.**

The Enhanced Wireless 911 Fund is created. The fund shall consist of the surcharges credited to the fund, any money appropriated by the Legislature, any federal funds received for wireless emergency communication, and any other funds designated for credit to the fund. Money in the fund shall be used for the costs of administering the fund and the purposes specified in section 86-465 unless otherwise directed by federal law with respect to any federal funds. The costs of administering the fund shall be kept to a minimum. The money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the 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.

**Source:** Laws 2001, LB 585, § 8; R.S.Supp.,2001, § 86-2208; Laws 2002, LB 1105, § 264; Laws 2006, LB 1222, § 10.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**86-464 Service agreement; authorized.**

A public safety answering point may enter into a service agreement with one or more wireless carriers. The commission shall determine the most efficient method for providing enhanced wireless 911 service.

**Source:** Laws 2001, LB 585, § 9; R.S.Supp.,2001, § 86-2209; Laws 2002, LB 1105, § 265.

**86-465 Commission; advisory board; duties.**

(1) The commission shall, in consultation with the advisory board:

(a) Determine the costs to implement wireless automatic location identification;

(b) Determine the level of funding needed to trigger disbursements pursuant to the Enhanced Wireless 911 Services Act;

(c) Determine the percentage of the fund to be allocated to each funding purpose, including the percentage that shall be designated for funding 911 service under subdivision (2)(c) of this section;

(d) Determine how the funds distributed under subdivisions (2)(a) and (2)(c) of this section are to be allocated among the wireless carriers and the public safety answering points; and

(e) Establish a mechanism for determining the level of funding available to each public safety answering point and wireless carrier for costs determined to be eligible by the commission under subsection (2) of this section.

(2) The commission shall, in consultation with the advisory board, establish eligibility standards and criteria for fund disbursement applications and standards and criteria concerning the level of fund disbursement for each application. In establishing such criteria and standards, the following purposes may be eligible for funding:

(a) Costs incurred or to be incurred by wireless carriers to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs may include, but not be limited to, the portion of the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any data base or data base elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service. The portion of the costs of equipment or services used in the wireless carrier's main infrastructure resulting in revenue to the wireless carrier is not eligible for funding;

(b) Costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service may include, but not be limited to, purchases of new equipment, costs of upgrades, modification and personnel training used solely to process the data elements of enhanced wireless 911 service, and maintenance costs and license fees for new equipment;

(c) Costs incurred or to be incurred by public safety answering points for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of enhanced wireless 911 service; and

(d) Expenses incurred by members of the advisory board while performing duties required by the act.

(3) A wireless carrier receiving funds from the Enhanced Wireless 911 Fund shall not directly assess any of the costs associated with the implementation or provision of enhanced wireless 911 service to any public safety answering point, county, or municipality without the express consent of the commission.

(4) The commission shall have any powers necessary to carry out the intent and purposes of the act.

**Source:** Laws 2001, LB 585, § 10; R.S.Supp.,2001, § 86-2210; Laws 2002, LB 1105, § 266; Laws 2006, LB 1222, § 11; Laws 2008, LB755, § 10.

Effective date March 20, 2008.

#### **86-466 Compensation for costs.**

(1) A public safety answering point and wireless carrier may be compensated for costs determined by the commission to be eligible for funding. The level of funding available to each public safety answering point and wireless carrier for eligible cost compensation may be limited based upon the mechanism established by the commission pursuant to section 86-465. The commission is not required to provide compensation for costs to more than one public safety answering point in any county. A public safety answering point or wireless carrier may apply for disbursement from the Enhanced Wireless 911 Fund by submitting a written application to the commission. The commission shall receive and review applications, including supporting documentation. The

commission shall notify each applicant as to the commission's approval or disapproval of the application.

(2) Each entity that receives disbursements from the fund shall make a full accounting of the money in a manner and form prescribed by the commission.

**Source:** Laws 2001, LB 585, § 11; R.S.Supp.,2001, § 86-2211; Laws 2002, LB 1105, § 267; Laws 2006, LB 1222, § 12.

**86-466.01 County without enhanced wireless 911 service; commission; powers.**

If any county does not have enhanced wireless 911 service, the commission may designate a public safety answering point that has enhanced wireless 911 service to receive wireless 911 service calls and directly dispatch or relay calls to the appropriate emergency services provider until the county has implemented enhanced wireless 911 service.

**Source:** Laws 2006, LB 1222, § 13.

**86-467 Confidential information.**

Information provided by wireless carriers to the advisory board or the commission pursuant to the Enhanced Wireless 911 Services Act may be treated as records which may be withheld from the public upon request of the party submitting such records if the information qualifies under subdivision (3) of section 84-712.05.

**Source:** Laws 2001, LB 585, § 12; R.S.Supp.,2001, § 86-2212; Laws 2002, LB 1105, § 268.

**86-468 Immunity.**

The commission, governing bodies, and public safety agencies may provide enhanced wireless 911 service. In contracting for and providing such service, except for failure to use reasonable care or for intentional acts, the commission, each governing body, each public safety agency, each wireless carrier, and their employees and agents shall be immune from liability or the payment of damages in the performance of installing, maintaining, or providing enhanced wireless 911 service.

**Source:** Laws 2001, LB 585, § 13; R.S.Supp.,2001, § 86-2213; Laws 2002, LB 1105, § 269.

**86-469 Rules and regulations.**

The commission, in consultation with the advisory board, shall adopt and promulgate rules and regulations necessary to carry out the Enhanced Wireless 911 Services Act.

**Source:** Laws 2001, LB 585, § 14; R.S.Supp.,2001, § 86-2214; Laws 2002, LB 1105, § 270.

**86-470 Civil penalty.**

The commission may assess a civil penalty pursuant to section 75-156 for each violation of any provision of the Enhanced Wireless 911 Services Act or

any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

**Source:** Laws 2003, LB 187, § 30.

## ARTICLE 5

### PUBLIC TECHNOLOGY INFRASTRUCTURE

#### Cross References

**Alcoholic liquor**, shipment of, see Chapter 53, article 1.

**Cigarettes**, shipment of, regulations, see sections 77-2621 and 77-2622.

**Diseased or infected plants or plant products**, prohibited shipments, see Chapter 2, article 10.

**Fish and game shipments**, regulations, see sections 37-510 and 37-511.

**Franchise tax**, report, see sections 77-801 to 77-804.

**Nursery stock imports**, duties of carrier, see Chapter 2, article 10.

#### (a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

##### Section

- 86-501. Act, how cited.
- 86-502. Definitions, where found.
- 86-503. Commission, defined.
- 86-504. Department, defined.
- 86-505. Enterprise, defined.
- 86-506. Enterprise project, defined.
- 86-507. Information technology, defined.
- 86-508. Information technology clearinghouse, defined.
- 86-509. Information technology infrastructure, defined.
- 86-510. Statewide technology plan, defined.
- 86-511. Technical panel, defined.
- 86-512. Legislative intent.
- 86-513. Legislative findings and intent.
- 86-514. University of Nebraska; Legislature; exemptions.
- 86-515. Nebraska Information Technology Commission; created; members; expenses; executive director.
- 86-516. Commission; duties.
- 86-517. Commission; implementation goals.
- 86-518. Progress report.
- 86-519. Office of Chief Information Officer; created.
- 86-520. Chief Information Officer; duties.
- 86-521. Technical panel; created; duties.
- 86-522. Community Technology Fund; created; use; investment.
- 86-523. Government Technology Collaboration Fund; created; use; investment.
- 86-524. Legislative review.
- 86-524.01. Information technology plan; report required.
- 86-525. Enterprise project; legislative findings.
- 86-526. Enterprise project; designation.
- 86-527. Information Technology Infrastructure Fund; created; use; investment.
- 86-528. Enterprise project; funding.
- 86-529. Enterprise project; commission; duties.
- 86-530. Enterprise project; report.

#### (b) INTERGOVERNMENTAL DATA COMMUNICATIONS ACT

- 86-531. Repealed. Laws 2008, LB 823, § 23.
- 86-532. Repealed. Laws 2008, LB 823, § 23.
- 86-533. Repealed. Laws 2008, LB 823, § 23.
- 86-534. Repealed. Laws 2008, LB 823, § 23.
- 86-535. Repealed. Laws 2008, LB 823, § 23.
- 86-536. Repealed. Laws 2008, LB 823, § 23.
- 86-537. Repealed. Laws 2008, LB 823, § 23.
- 86-538. Repealed. Laws 2008, LB 823, § 23.
- 86-539. Repealed. Laws 2008, LB 823, § 23.
- 86-540. Repealed. Laws 2008, LB 823, § 23.
- 86-541. Repealed. Laws 2008, LB 823, § 23.

## TELECOMMUNICATIONS AND TECHNOLOGY

### Section

- 86-542. Repealed. Laws 2008, LB 823, § 23.
- 86-543. Repealed. Laws 2008, LB 823, § 23.
- 86-544. Repealed. Laws 2008, LB 823, § 23.
- 86-545. Repealed. Laws 2008, LB 823, § 23.
- 86-546. Repealed. Laws 2008, LB 823, § 23.
- 86-547. Repealed. Laws 2008, LB 823, § 23.
- 86-548. Repealed. Laws 2008, LB 823, § 23.
- 86-549. Repealed. Laws 2008, LB 823, § 23.

#### (c) INTERGOVERNMENTAL DATA SERVICES PROGRAM

- 86-550. Act, how cited.
- 86-551. Intergovernmental data services program; created.
- 86-552. Definitions, where found.
- 86-553. Repealed. Laws 2008, LB 823, § 23.
- 86-554. Application, defined.
- 86-555. Office, defined.
- 86-556. Officer, defined.
- 86-557. Division, defined.
- 86-558. Intergovernmental data services system, defined.
- 86-559. Local application, defined.
- 86-560. Peripheral device, defined.
- 86-561. System, defined.
- 86-562. System; purposes.
- 86-563. Division; duties and powers.
- 86-564. Budget; duties.
- 86-565. Rules and regulations.
- 86-566. Data Systems Cash Fund; created; use; investment.
- 86-567. Intergovernmental Data Services Program Revolving Fund; created; use; investment.
- 86-568. Miscellaneous cash and revolving funds; authorized.

#### (d) GEOGRAPHIC INFORMATION SYSTEM

- 86-569. Findings and intent.
- 86-570. Geographic Information Systems Council; created; members; appointment; terms; expenses.
- 86-571. Council; officers; advisory committees; meetings; expenses.
- 86-572. Council; duties.
- 86-573. Council; report.

#### (e) PUBLICLY OWNED DARK FIBER

- 86-574. Dark fiber, defined.
- 86-575. Agency or political subdivision; dark fiber; disposition; powers.
- 86-576. Agency or political subdivision; dark fiber; sale.
- 86-577. Agency or political subdivision; dark fiber; lease.
- 86-578. Dark fiber; violation; procedure; appeal.

#### (f) INTERNET ENHANCEMENT

- 86-579. Nebraska Internet Enhancement Fund; created; use; investment.
- 86-580. Nebraska Internet Enhancement Fund; financial assistance; application process.

#### (g) COUNTY TELEPHONE SYSTEMS

- 86-581. Repealed. Laws 2005, LB 645, § 11.
- 86-582. Repealed. Laws 2005, LB 645, § 11.
- 86-583. Repealed. Laws 2005, LB 645, § 11.
- 86-584. Repealed. Laws 2005, LB 645, § 11.
- 86-585. Repealed. Laws 2005, LB 645, § 11.
- 86-586. Repealed. Laws 2005, LB 645, § 11.
- 86-587. Repealed. Laws 2005, LB 645, § 11.
- 86-588. Repealed. Laws 2005, LB 645, § 11.
- 86-589. Repealed. Laws 2005, LB 645, § 11.
- 86-590. Repealed. Laws 2005, LB 645, § 11.

## Section

- 86-591. Repealed. Laws 2005, LB 645, § 11.  
 86-592. Repealed. Laws 2005, LB 645, § 11.

## (h) RETAIL OR WHOLESALE SERVICES

- 86-593. Terms, defined.  
 86-594. Agency or political subdivision of state; limitation on power.  
 86-595. Public power supplier; limitation on retail services.  
 86-596. Public power supplier; limitation on wholesale services; termination.  
 86-597. Retail or wholesale service; how construed.  
 86-598. Sections; how construed.  
 86-599. Broadband Services Task Force; created; members; duties.

## (i) NETWORK NEBRASKA

- 86-5,100. Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost.  
 86-5,101. State Department of Education; provide funding for Network Nebraska; use; repayment; applications; contents; denial; appeal.

## (a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

**86-501 Act, how cited.**

Sections 86-501 to 86-530 shall be known and may be cited as the Information Technology Infrastructure Act.

**Source:** Laws 1996, LB 1190, § 1; Laws 2000, LB 1349, § 3; R.S.Supp.,2000, § 81-1190; Laws 2002, LB 1105, § 271; Laws 2008, LB823, § 1.  
 Effective date July 18, 2008.

**86-502 Definitions, where found.**

For purposes of the Information Technology Infrastructure Act, the definitions found in sections 86-503 to 86-511 apply.

**Source:** Laws 1996, LB 1190, § 2; Laws 2000, LB 1349, § 4; R.S.Supp.,2000, § 81-1191; Laws 2002, LB 1105, § 272.

**86-503 Commission, defined.**

Commission means the Nebraska Information Technology Commission.

**Source:** Laws 1998, LB 924, § 4; R.S.1943, (1999), § 86-1504; Laws 2002, LB 1105, § 273.

**86-504 Department, defined.**

Department means the Department of Administrative Services.

**Source:** Laws 2002, LB 1105, § 274.

**86-505 Enterprise, defined.**

Enterprise means the entirety of all departments, offices, boards, bureaus, commissions, or institutions in the state for which money is to be appropriated for communications or data processing services, equipment, or facilities, including all executive, legislative, and judicial departments, the Nebraska state colleges, the University of Nebraska, and all other state institutions and entities.

**Source:** Laws 2002, LB 1105, § 275.

**86-506 Enterprise project, defined.**

Enterprise project means an endeavor undertaken over a fixed period of time using information technology, which would have a significant effect on a core business function or affects multiple government programs, agencies, or institutions. Enterprise project includes all aspects of planning, design, implementation, project management, and training relating to the endeavor.

**Source:** Laws 2002, LB 1105, § 276; Laws 2008, LB823, § 2.  
Effective date July 18, 2008.

**86-507 Information technology, defined.**

Information technology means computing and telecommunications systems and their supporting infrastructure and interconnectivity used to acquire, transport, process, analyze, store, and disseminate information electronically.

**Source:** Laws 2002, LB 1105, § 277.

**86-508 Information technology clearinghouse, defined.**

Information technology clearinghouse means a service to provide convenient access for the commission and general public to information about best technology practices, referrals for technical assistance, and other information related to the Information Technology Infrastructure Act.

**Source:** Laws 2002, LB 1105, § 278.

**86-509 Information technology infrastructure, defined.**

Information technology infrastructure means the basic facilities, services, and installations needed for the functioning of information technology.

**Source:** Laws 2002, LB 1105, § 279.

**86-510 Statewide technology plan, defined.**

Statewide technology plan means the plan developed by the commission pursuant to section 86-516.

**Source:** Laws 2002, LB 1105, § 280.

**86-511 Technical panel, defined.**

Technical panel means the panel created in section 86-521.

**Source:** Laws 2002, LB 1105, § 281.

**86-512 Legislative intent.**

Nebraskans, and others throughout the world, have become part of the information age, in which information is a primary element of economic, social, and cultural growth. The ability to move information quickly and accurately through electronic means is critical to the success of education, business, agriculture, health care, government, libraries, communities, and other areas of interest in a global society. A statewide vision and strategy is needed to ensure coordinated development of the telecommunications infra-

structure necessary for Nebraska to keep pace worldwide and collaboration among entities within the state and with other states.

**Source:** Laws 1998, LB 924, § 1; R.S.1943, (1999), § 86-1501; Laws 2002, LB 1105, § 282.

#### **86-513 Legislative findings and intent.**

(1) The Legislature finds that appropriations for information technology continue to increase. Advances in information technology have the potential to improve government efficiency, broaden educational opportunities, and enhance services to Nebraska communities and citizens. To assure the most cost-effective use of state appropriations:

(a) Responsibility should be assigned for developing a statewide vision and strategic plan to guide investments in information technology;

(b) Organizational and technical support for technology budget decisions should be improved and integrated;

(c) A clearinghouse should be formed for technical support and best practices information; and

(d) Responsibility should be assigned to an office within state government for improving the planning, budgeting, and management of state government's information resources.

(2) It is the intent of the State of Nebraska to support the development of a unified statewide telecommunications infrastructure. The statewide telecommunications infrastructure will be scalable, reliable, and efficient. It is further the intent of the Legislature that the provisions of sections 86-512 to 86-524 serve to coordinate the state's investments in information technology in an efficient and expeditious manner. The provisions are not intended to impede the rapid deployment of appropriate technology or establish cumbersome regulations or bureaucracy.

**Source:** Laws 1998, LB 924, § 2; R.S.1943, (1999), § 86-1502; Laws 2002, LB 1105, § 283.

#### **86-514 University of Nebraska; Legislature; exemptions.**

(1) The Legislature finds that the University of Nebraska, as the state's only public university, has unique needs and requirements in the area of information technology relating to the university's academic research mission. Accordingly, the Legislature intends that sections 86-512 to 86-524 shall not limit the authority of the Board of Regents of the University of Nebraska to make decisions about policies, purchases, and uses of information technology related to its academic research mission. For purposes of this section, academic research mission means those specific activities or programs of the university which are undertaken as a part of sponsored or grant-supported activities, organized research projects, or other similar activities intended to produce one or more research outcomes and conducted by employees of the university or other entities, including, but not limited to, research divisions, bureaus, institutes, and experimental stations. Academic research mission does not include the administrative activities of the university, instruction of students, or services provided by the university to communities when not conducted in the context of research outcomes.

(2) The Legislature finds that, as a separate branch of government, the Legislature must perform its functions independently of other branches. Accordingly, the Legislature shall not be limited by the provisions and requirements of sections 86-512 to 86-524. However the Legislature reserves the right to use the resources established by such sections.

**Source:** Laws 1998, LB 924, § 3; R.S.1943, (1999), § 86-1503; Laws 2002, LB 1105, § 284.

**86-515 Nebraska Information Technology Commission; created; members; expenses; executive director.**

(1) The Nebraska Information Technology Commission is created. The commission shall consist of (a) one member representing elementary and secondary education, (b) one member representing postsecondary education, (c) the Governor or his or her designee, (d) one member representing communities, and (e) five members representing the general public who have experience in developing strategic plans and making high-level business decisions. At any time that there is not a member of the Educational Service Unit Coordinating Council serving on the Nebraska Information Technology Commission, the technical panel established pursuant to section 86-521, or any working groups established pursuant to sections 86-512 to 86-524 that establish, coordinate, or prioritize needs for education, the Governor shall appoint to the commission one member who serves on the Educational Service Unit Coordinating Council.

(2) The Governor or a designee of the Governor shall serve as chairperson of the commission.

(3) The members of the commission shall be appointed by the Governor with the approval of a majority of the Legislature. Members of the commission shall serve for terms of four years, except that two members initially appointed to represent the general public shall be appointed for a term of two years and any member appointed to represent the Educational Service Unit Coordinating Council shall be appointed for a term of one year. Members shall be limited to two consecutive terms. The Governor or his or her designee shall serve on the commission for his or her term. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term.

(4) Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The commission may employ or designate an executive director to provide administrative and operational support for the commission. The Department of Administrative Services and Nebraska Educational Telecommunications Commission shall assist with administrative and operational support for the Nebraska Information Technology Commission as necessary to carry out its duties.

**Source:** Laws 1998, LB 924, § 5; R.S.1943, (1999), § 86-1505; Laws 2002, LB 1105, § 285; Laws 2006, LB 1208, § 27; Laws 2007, LB603, § 32.

**86-516 Commission; duties.**

The commission shall:

- (1) Annually by July 1, adopt policies and procedures used to develop, review, and annually update a statewide technology plan;
- (2) Create an information technology clearinghouse to identify and share best practices and new developments, as well as identify existing problems and deficiencies;
- (3) Review and adopt policies to provide incentives for investments in information technology infrastructure services;
- (4) Determine a broad strategy and objectives for developing and sustaining information technology development in Nebraska, including long-range funding strategies, research and development investment, support and maintenance requirements, and system usage and assessment guidelines;
- (5) Adopt guidelines regarding project planning and management and administrative and technical review procedures involving state-owned or state-supported technology and infrastructure. Governmental entities, state agencies, and political subdivisions shall submit all projects which use any combination of general funds, federal funds, or cash funds for information technology purposes to the process established by sections 86-512 to 86-524. The commission may adopt policies that establish the format and minimum requirements for project submissions. The commission may monitor the progress of any such project and may require progress reports;
- (6) Adopt minimum technical standards, guidelines, and architectures upon recommendation by the technical panel;
- (7) Establish ad hoc technical advisory groups to study and make recommendations on specific topics, including workgroups to establish, coordinate, and prioritize needs for education, local communities, intergovernmental data communications, and state agencies;
- (8) By November 15 of each even-numbered year, make recommendations on technology investments to the Governor and the Legislature, including a prioritized list of projects, reviewed by the technical panel pursuant to section 86-521;
- (9) Approve grants from the Community Technology Fund and Government Technology Collaboration Fund;
- (10) Adopt schedules and procedures for reporting needs, priorities, and recommended projects;
- (11) Assist the Chief Information Officer in developing and maintaining Network Nebraska pursuant to section 86-5,100; and
- (12) Determine the format that state agencies, boards, and commissions shall use to report their information technology plans under section 86-524.01. The commission shall include an analysis of such plans in the statewide technology plan.

**Source:** Laws 1998, LB 924, § 6; Laws 1999, LB 446, § 12; R.S.1943, (1999), § 86-1506; Laws 2002, LB 1105, § 286; Laws 2005, LB 343, § 9; Laws 2006, LB 1208, § 28; Laws 2008, LB823, § 3. Effective date July 18, 2008.

**86-517 Commission; implementation goals.**

The commission shall implement sections 86-512 to 86-524 in accordance with the policy objectives described in sections 86-512, 86-513, and 86-516 and with the following goals:

- (1) Expanding access to lifelong educational and training opportunities so that Nebraska's citizens and work force can function in the emerging information society;
- (2) Stimulating and supporting information-based economic development that improves economic opportunity; and
- (3) Expanding citizen access to government information.

**Source:** Laws 1998, LB 924, § 7; R.S.1943, (1999), § 86-1507; Laws 2002, LB 1105, § 287.

**86-518 Progress report.**

By November 15 of each even-numbered year, the Nebraska Information Technology Commission shall submit a progress report to the Governor and Legislature.

**Source:** Laws 1998, LB 924, § 8; R.S.1943, (1999), § 86-1508; Laws 2002, LB 1105, § 288.

**86-519 Office of Chief Information Officer; created.**

The office of Chief Information Officer is created. The Chief Information Officer shall be appointed by and serve at the pleasure of the Governor with the approval of a majority of the Legislature. For administrative and budgetary purposes, the office of Chief Information Officer shall be located in the Department of Administrative Services which shall provide necessary support services for the office. All administrative and budgetary decisions for the office shall be made by the Chief Information Officer.

**Source:** Laws 1998, LB 924, § 9; R.S.1943, (1999), § 86-1509; Laws 2002, LB 1105, § 289; Laws 2006, LB 921, § 15.

**86-520 Chief Information Officer; duties.**

The Chief Information Officer shall:

- (1) Maintain, in cooperation with the Department of Administrative Services, an inventory of noneducation state government technology assets, including hardware, applications, and data bases;
- (2) Recommend policies and guidelines for acceptable and cost-effective use of information technology in noneducation state government;
- (3) Advise the Governor and Legislature on policy issues affecting noneducation state government related to information technology;
- (4) Coordinate efforts among other noneducation state government technology agencies and coordinating bodies;
- (5) Implement a strategic, tactical, and project planning process for noneducation state government information technology that is linked to the budget process;

- (6) Assist the budget division of the Department of Administrative Services and Legislative Fiscal Analyst in evaluating technology-related budget requests;

(7) Work with each governmental department and noneducation state agency to evaluate and act upon opportunities to more efficiently and effectively deliver government services through the use of information technology;

(8) Recommend to the Governor and Legislature methods for improving the organization and management of data by noneducation agencies to achieve the goals of making information sharable and reusable, eliminating redundancy of data and programs, improving the quality and usefulness of data, and improving access to data, and implement such recommendations as the Governor or Legislature may direct;

(9) Monitor the status of major noneducation state government technology projects;

(10) Establish and maintain Network Nebraska pursuant to section 86-5,100;

(11) Bid for telecomputing and distance education equipment pursuant to section 79-1233;

(12) Apply in aggregate for reimbursements from the federal Universal Service Fund pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of school districts requesting to be included in such aggregated application;

(13) Administer such funds as may be appropriated to the Chief Information Officer by the Legislature;

(14) Monitor the status of information technology projects that are enterprise projects;

(15) Collect information from state agencies, boards, and commissions as provided in section 86-524.01; and

(16) Complete other tasks as assigned by the Governor.

**Source:** Laws 1998, LB 924, § 10; R.S.1943, (1999), § 86-1510; Laws 2002, LB 1105, § 290; Laws 2006, LB 1208, § 29; Laws 2008, LB823, § 4.

Effective date July 18, 2008.

**86-521 Technical panel; created; duties.**

(1) A technical panel is created. The technical panel shall be comprised of one representative from the Nebraska Educational Telecommunications Commission, one representative from the office of Chief Information Officer, one representative from the University of Nebraska Computing Services Network, and such other members as specified by the Nebraska Information Technology Commission.

(2) The technical panel shall review any technology project presented to the Nebraska Information Technology Commission including any recommendations by working groups established under sections 86-512 to 86-524. Upon the conclusion of the review of a technology project or request for additional funding, the technical panel shall provide its analysis to the commission. The technical panel may recommend technical standards and guidelines to be considered for adoption by the commission.

**Source:** Laws 1998, LB 924, § 11; R.S.1943, (1999), § 86-1511; Laws 2002, LB 1105, § 291; Laws 2006, LB 921, § 16; Laws 2008, LB823, § 5.

Effective date July 18, 2008.

**86-522 Community Technology Fund; created; use; investment.**

The Community Technology Fund is created. The fund shall be granted to public entities or for the public entity's share of public-private partnerships by the commission. The fund shall be used to provide incentives for collaborative community and regional approaches toward more effective and efficient use of technology to meet the needs of citizens, political subdivisions, and other entities as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. The fund shall be administered by the office of Chief Information Officer. Any money in the 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.

**Source:** Laws 1998, LB 924, § 12; R.S.1943, (1999), § 86-1512; Laws 2002, LB 1105, § 292; Laws 2006, LB 921, § 17.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**86-523 Government Technology Collaboration Fund; created; use; investment.**

The Government Technology Collaboration Fund is created. The fund shall be granted by the commission. The fund shall be used to provide incentives for collaborative technology projects and programs by state agencies, boards, and commissions and to assist in meeting the technology needs of small agencies as determined by the commission. Expenditures from the fund shall be approved by the commission only after review by the technical panel. The fund shall be administered by the office of Chief Information Officer. Any money in the 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.

**Source:** Laws 1998, LB 924, § 13; R.S.1943, (1999), § 86-1513; Laws 2002, LB 1105, § 293; Laws 2006, LB 921, § 18.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**86-524 Legislative review.**

(1) The Appropriations Committee and the Transportation Committee of the Legislature shall jointly review sections 86-512 to 86-524 before January 1, 2001, and every two years thereafter. The Executive Board of the Legislative Council shall designate staff with appropriate technical experience to provide the staff support for the review. The committees shall establish criteria to be used for the review in accordance with the following policy objectives. It shall be the policy of the state to:

(a) Use information technology in education, communities, including health care and economic development, and every level of government service to improve economic opportunities and quality of life for all Nebraskans regardless of location or income;

(b) Stimulate the demand to encourage and enable long-term infrastructure innovation and improvement; and

(c) Organize technology planning in new ways to aggregate demand, reduce costs, and create support networks; encourage collaboration between communities of interest; and encourage competition among technology and service providers.

(2) In the review, the committees shall determine the extent to which:

(a) The vision has been realized and short-term and long-term strategies have been articulated and employed;

(b) The statewide technology plan and other activities of the commission have improved coordination and assisted policymakers;

(c) An information technology clearinghouse has been established, maintained, and utilized of Nebraska's information technology infrastructure and of activities taking place in the state involving information technology, and the information flow between and among individuals and organizations has been facilitated as a result of the information technology clearinghouse;

(d) Policies, standards, guidelines, and architectures have been developed and observed;

(e) Recommendations made by the commission to the Governor and Legislature have assisted policy and funding decisions;

(f) Input and involvement of all interested parties has been encouraged and facilitated; and

(g) Long-term infrastructure innovation, improvement, and coordination has been planned for, facilitated, and achieved with minimal barriers and impediments.

**Source:** Laws 1998, LB 924, § 14; R.S.1943, (1999), § 86-1514; Laws 2002, LB 1105, § 294.

#### **86-524.01 Information technology plan; report required.**

On or before September 15 of each even-numbered year, all state agencies, boards, and commissions shall report to the Chief Information Officer, in a format determined by the commission, an information technology plan that includes an accounting of all technology assets, including planned acquisitions and upgrades.

**Source:** Laws 2008, LB823, § 6.  
Effective date July 18, 2008.

#### **86-525 Enterprise project; legislative findings.**

In addition to the findings in section 86-513, the Legislature also finds that:

(1) The effective, efficient, and cost-effective operation of state government requires that information be considered and managed as a strategic resource;

(2) Information technologies present numerous opportunities to more effectively manage the information necessary for state government operations;

(3) Information technologies are changing and advancing at a very rapid rate, increasing the computing power available to individual users;

(4) The commission should have the responsibility to establish goals, guidelines, and priorities for information technology infrastructure; and

(5) Periodic investments in the information technology infrastructure are required to develop and maintain the foundation for the effective use of information technologies throughout state government.

**Source:** Laws 1996, LB 1190, § 3; Laws 2000, LB 1349, § 5; R.S.Supp.,2000, § 81-1192; Laws 2002, LB 1105, § 295.

**86-526 Enterprise project; designation.**

The commission shall determine which proposed information technology projects are enterprise projects. The commission shall create policies and procedures for the designation of such projects. The commission shall evaluate designated enterprise project plans as authorized in section 86-528.

**Source:** Laws 1996, LB 1190, § 5; Laws 2000, LB 1349, § 6; R.S.Supp.,2000, § 81-1194; Laws 2002, LB 1105, § 296; Laws 2008, LB823, § 7.  
Effective date July 18, 2008.

**86-527 Information Technology Infrastructure Fund; created; use; investment.**

The Information Technology Infrastructure Fund is hereby created. The fund shall contain revenue from the special privilege tax as provided in section 77-2602, gifts, grants, and such other money as is appropriated or transferred by the Legislature. The fund shall be used to attain the goals and priorities identified in the statewide technology plan. The fund shall be administered by the office of Chief Information Officer. Expenditures shall be made from the fund to finance the operations of the Information Technology Infrastructure Act in accordance with the appropriations made by the Legislature. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Information Technology Infrastructure 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.

**Source:** Laws 1996, LB 1190, § 6; Laws 1998, LB 924, § 42; Laws 2000, LB 1349, § 7; R.S.Supp.,2000, § 81-1195; Laws 2002, LB 1105, § 297; Laws 2002, Second Spec. Sess., LB 1, § 10; Laws 2003, LB 408, § 7; Laws 2006, LB 921, § 19; Laws 2008, LB823, § 8.  
Effective date July 18, 2008.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**86-528 Enterprise project; funding.**

(1) The Legislature may allocate money from the Information Technology Infrastructure Fund for enterprise projects. The Legislature may recognize multiple-year commitments for large projects, subject to available appropriations, including remaining obligations for the century date change project managed by the department.

(2) No contract or expenditure for the implementation of an enterprise project may be initiated unless the commission has approved a project plan. The project plan shall include, but not be limited to, the objectives, scope, and justification of the project; detailed specifications and analyses that guide the

project from beginning to conclusion; technical requirements; and project management. The commission may request clarification, require changes, or provide conditional approval of a project plan. In its review, the commission shall determine whether the objectives, scope, timeframe, and budget of the project are consistent with the proposal authorized by the Legislature in its allocation from the fund.

(3) The commission may also evaluate whether the project plan is consistent with the statewide technology plan and the commission's technical standards and guidelines.

**Source:** Laws 2000, LB 1349, § 8; R.S.Supp.,2000, § 81-1196.01; Laws 2002, LB 1105, § 298; Laws 2008, LB823, § 9.  
Effective date July 18, 2008.

**86-529 Enterprise project; commission; duties.**

To implement enterprise projects pursuant to sections 86-525 to 86-530, the commission shall:

(1) Develop procedures and issue guidelines regarding the review, approval, and monitoring of enterprise projects; and

(2) Coordinate with the Chief Information Officer to monitor the status of enterprise projects, including a complete accounting of all project costs by fund source.

**Source:** Laws 1996, LB 1190, § 10; Laws 1998, LB 924, § 43; Laws 2000, LB 1349, § 9; R.S.Supp.,2000, § 81-1199; Laws 2002, LB 1105, § 299; Laws 2008, LB823, § 10.  
Effective date July 18, 2008.

**86-530 Enterprise project; report.**

The Chief Information Officer shall report annually to the Governor and the Appropriations Committee of the Legislature on the status of enterprise projects.

**Source:** Laws 1996, LB 1190, § 13; Laws 2000, LB 1349, § 10; R.S.Supp.,2000, § 81-11,102; Laws 2002, LB 1105, § 300; Laws 2008, LB823, § 11.  
Effective date July 18, 2008.

(b) INTERGOVERNMENTAL DATA COMMUNICATIONS ACT

**86-531 Repealed. Laws 2008, LB 823, § 23.**

**86-532 Repealed. Laws 2008, LB 823, § 23.**

**86-533 Repealed. Laws 2008, LB 823, § 23.**

**86-534 Repealed. Laws 2008, LB 823, § 23.**

**86-535 Repealed. Laws 2008, LB 823, § 23.**

**86-536 Repealed. Laws 2008, LB 823, § 23.**

**86-537 Repealed. Laws 2008, LB 823, § 23.**

**86-538 Repealed. Laws 2008, LB 823, § 23.**

**86-539 Repealed. Laws 2008, LB 823, § 23.**

**86-540 Repealed. Laws 2008, LB 823, § 23.**

**86-541 Repealed. Laws 2008, LB 823, § 23.**

**86-542 Repealed. Laws 2008, LB 823, § 23.**

**86-543 Repealed. Laws 2008, LB 823, § 23.**

**86-544 Repealed. Laws 2008, LB 823, § 23.**

**86-545 Repealed. Laws 2008, LB 823, § 23.**

**86-546 Repealed. Laws 2008, LB 823, § 23.**

**86-547 Repealed. Laws 2008, LB 823, § 23.**

**86-548 Repealed. Laws 2008, LB 823, § 23.**

**86-549 Repealed. Laws 2008, LB 823, § 23.**

(c) INTERGOVERNMENTAL DATA SERVICES PROGRAM

**86-550 Act, how cited.**

Sections 86-550 to 86-568 shall be known and may be cited as the Intergovernmental Data Services Program Act.

**Source:** Laws 2002, LB 1105, § 320.

**86-551 Intergovernmental data services program; created.**

The intergovernmental data services program is created and shall be located within the information management services division of the office of Chief Information Officer.

**Source:** Laws 1993, LB 543, § 1; Laws 2000, LB 654, § 31; R.S.Supp.,2000, § 81-1120.35; Laws 2002, LB 1105, § 321; Laws 2006, LB 921, § 21.

**86-552 Definitions, where found.**

For purposes of the Intergovernmental Data Services Program Act, the definitions found in sections 86-554 to 86-561 apply.

**Source:** Laws 1993, LB 543, § 2; Laws 2000, LB 654, § 32; R.S.Supp.,2000, § 81-1120.36; Laws 2002, LB 1105, § 322; Laws 2008, LB823, § 12.  
Effective date July 18, 2008.

**86-553 Repealed. Laws 2008, LB 823, § 23.**

**86-554 Application, defined.**

Application means a computer program that provides a specific service to the user. Application includes the applications specified in Laws 1989, LB 814, section 54, and all applications of statewide or intergovernmental benefit subject to the review set forth in subdivision (2)(a) of section 86-563.

**Source:** Laws 2002, LB 1105, § 324.

**86-555 Office, defined.**

Office means the office of Chief Information Officer.

**Source:** Laws 2002, LB 1105, § 325; Laws 2006, LB 921, § 22.

**86-556 Officer, defined.**

Officer means the Chief Information Officer.

**Source:** Laws 2002, LB 1105, § 326; Laws 2006, LB 921, § 23.

**86-557 Division, defined.**

Division means the information management services division of the office.

**Source:** Laws 2002, LB 1105, § 327; Laws 2006, LB 921, § 24.

**86-558 Intergovernmental data services system, defined.**

Intergovernmental data services system means the installation and use of applications on a computer network that allows for the intergovernmental transfer of data, automation of multijurisdictional functions, and integration of governmental entities that involve multiple locations separated by long distances. Intergovernmental data services system includes computers that serve as platforms for statewide applications, cabling, other equipment essential to operating the computers, and operating programs that allow the computers to function. Intergovernmental data services system does not include any applications.

**Source:** Laws 2002, LB 1105, § 328.

**86-559 Local application, defined.**

Local application means a computer program intended for use at the local government or state agency level, not of intergovernmental use, serving only limited local needs and proposed to be resident on only a limited part of the system.

**Source:** Laws 2002, LB 1105, § 329.

**86-560 Peripheral device, defined.**

Peripheral device means equipment that connects to the system to allow local use and access to applications on the system. Peripheral device includes, but is not limited to, microprocessors, word processors, desktop computers, terminals, and printers.

**Source:** Laws 2002, LB 1105, § 330.

**86-561 System, defined.**

System means the intergovernmental data services system.

**Source:** Laws 2002, LB 1105, § 331.

**86-562 System; purposes.**

The purpose of the system is to allow for the efficient operation of state government and its political subdivisions. In managing and allocating resources on the system, the officer shall assign first priority to providing capacity for statewide applications that are essential to carrying out the duties of state

agencies in an efficient and effective manner. The system may also serve local data processing needs of political subdivisions, provide citizens with a point of access to governmental services and information, and serve other state and local needs, subject to available resources.

**Source:** Laws 1993, LB 543, § 3; Laws 2000, LB 654, § 33; R.S.Supp.,2000, § 81-1120.37; Laws 2002, LB 1105, § 332; Laws 2008, LB823, § 13.  
Effective date July 18, 2008.

**86-563 Division; duties and powers.**

In establishing and maintaining the system:

(1) The division:

(a) Shall provide the computer network and services for the system with assistance from the division of communications of the office;

(b) Shall, within available resources, assist local, state, and federal collaborative efforts to encourage coordination of information systems and data sharing;

(c) Shall coordinate its activities and responsibilities with the functions of the division of communications to minimize overlap and duplication of technical services between the divisions in supporting the system, its applications, and application development; and

(d) May undertake and coordinate planning studies to determine the feasibility, benefits, costs, requirements, and options for the intergovernmental transfer of data;

(2) The officer:

(a) Shall approve and coordinate the design, development, installation, training, and maintenance of applications by state agencies for use on the system. Any agency proposing to add an application to the system shall submit an evaluation to the officer that examines the cost-effectiveness, technical feasibility, and potential use of the proposed application; that identifies the total costs of the application, including design, development, testing, installation, operation, and any changes to the computer network that are necessary for its operation; and that provides a schedule that shows the estimated completion dates for design, development, testing, installation, training, and full operational status. The officer shall not approve an application by a state agency for use on the system unless his or her review shows that the application is cost effective and technically feasible, that funding is available, and that the proposed schedule is reasonable and feasible;

(b) Shall approve changes in the design of applications by state agencies for use on the system. The officer may require such information from the agency as necessary to determine that the proposed change in design is cost effective and technically feasible, that funding is available, and that the proposed schedule for implementation is reasonable and feasible;

(c) May contract with other governmental entities or private vendors in carrying out the duties relating to the intergovernmental data services program;

(d) Shall establish a rate schedule that reflects the rates adopted by the division of communications and the information management services division, plus any additional costs of the system. Such fees may reflect a base cost for access to the system, costs for actual usage of the system, costs for special

equipment or services, or a combination of these factors. The officer may charge for the costs of changes to the system that are requested by or are necessary to accommodate a request by a user. All fees shall be set to recover all costs of operation;

(e) May enter into agreements with other state and local governments, the federal government, or private-sector entities for the purpose of sale, lease, or licensing for third-party resale of applications and system design. Proceeds from such agreements shall be deposited to the Data Systems Cash Fund;

(f) Shall determine whether a local application shall be a component of the system. No local application shall be resident or operational in any component of the system without explicit authorization of the officer; and

(g) Shall approve or disapprove the attachment of any peripheral device to the system and may prescribe standards and specifications that such devices must meet;

(3) The officer shall be responsible for the proper operation of the system, applications, and peripheral devices purchased or developed by the expenditure of state funds. The ownership of such system, applications, and peripheral devices shall be vested with the state; and

(4) All communications and telecommunications services for the intergovernmental data services program and the system shall be secured from the division of communications.

**Source:** Laws 1993, LB 543, § 4; Laws 1994, LB 1066, § 104; Laws 1998, LB 924, § 40; Laws 2000, LB 654, § 34; R.S.Supp.,2000, § 81-1120.38; Laws 2002, LB 1105, § 333; Laws 2006, LB 921, § 25; Laws 2008, LB823, § 14.  
Effective date July 18, 2008.

#### **86-564 Budget; duties.**

(1) The officer shall submit as part of the biennial budget request of the office a listing of all applications submitted for consideration, cost estimates for development, testing, and full operation of each application, a recommended priority listing of the applications for which an evaluation is completed, and funding recommendations by application contained within the budget request for the division. All application estimates and requests shall be scheduled over ensuing fiscal years such that annual projected costs and completion of application phases to the point of fully operational status can be clearly determined. Local applications shall not be subject to the provisions of this subsection.

(2) All development costs for approved new applications shall be budgeted and appropriated to the division or to participating state agencies at the discretion of the Legislature. Agencies may independently request appropriations for such application development, however such requests shall be subject to the review and prioritization set forth in subdivision (2)(a) of section 86-563, and at such time as the application becomes an authorized application and funded by the Legislature, the cost of such development shall be appropriated to the division or to participating state agencies. To the extent possible, if office cash or revolving funds or federal funds may be used for application development, such funds may be transferred to the division and expended for applica-

tion development in order to properly account for all costs associated with application development.

**Source:** Laws 2002, LB 1105, § 334; Laws 2006, LB 921, § 26; Laws 2008, LB823, § 15.

Effective date July 18, 2008.

**86-565 Rules and regulations.**

The officer may adopt and promulgate rules, regulations, guidelines, and procedures to carry out sections 86-563 and 86-564.

**Source:** Laws 2002, LB 1105, § 335; Laws 2008, LB823, § 16.

Effective date July 18, 2008.

**86-566 Data Systems Cash Fund; created; use; investment.**

The Data Systems Cash Fund is created. The fund shall include money remitted from section 86-563. The fund may be expended for application-related purposes for which the Legislature makes a specific appropriation. The fund may be used to subsidize the cost of operating existing applications, for lowering rates charged to participating state agencies and counties, or for the purpose of new application development. Any money in the 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.

**Source:** Laws 2002, LB 1105, § 336.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**86-567 Intergovernmental Data Services Program Revolving Fund; created; use; investment.**

The Intergovernmental Data Services Program Revolving Fund is created. The fund shall be administered by the division. The fund shall consist of fees paid for services provided to state agencies, political subdivisions, or other governmental or private entities by the division and shall be used to pay for expenses incurred by the division. Any money in the 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.

**Source:** Laws 1994, LB 1194, § 3; Laws 1995, LB 7, § 121; Laws 2000, LB 654, § 35; R.S.Supp.,2000, § 81-1120.40; Laws 2002, LB 1105, § 337.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**86-568 Miscellaneous cash and revolving funds; authorized.**

The budget division of the Department of Administrative Services shall administratively create such cash and revolving funds as may be required to properly account for the receipt of charges for use of applications and the payment of expenses for operation of the system. It is the intent of the Legislature that operations of the system shall be fully financed by user charges

with the exception of development costs for new applications and initial costs of operation as applications progress to full operating status and are unable to generate sufficient fee revenue to finance operating costs.

**Source:** Laws 2002, LB 1105, § 338; Laws 2006, LB 921, § 27.

(d) GEOGRAPHIC INFORMATION SYSTEM

**86-569 Findings and intent.**

(1) The Legislature finds that Geographic Information Systems are a computer-based technology that captures, stores, analyzes, and displays information about the earth's surface from geographically referenced systems, that an interest in the systems is rapidly increasing at all levels of government, and that an institutional mechanism is needed to encourage initiatives, coordinate efforts, avoid duplication, seek efficiencies, develop guidelines, policies, and standards for operations and management, promote education and training, and make recommendations so that such technology will benefit the entire state and endure as an analysis tool for decisionmakers.

(2) It is the intent of the Legislature that a Geographic Information Systems Council be created with statewide responsibilities to take an active role in implementing Geographic Information Systems. Such council would help facilitate acquisition of such technology at all levels of government and make recommendations to the Legislature for program initiatives and funding and the fostering of communication, training, and education.

(3) It is the intent of the Legislature that the Geographic Information Systems Council serve as an advisory council to the Nebraska Information Technology Commission and assist the commission in its overall information technology planning and oversight and provide technical advice and recommendations related to the specialized needs of Geographic Information Systems.

**Source:** Laws 1991, LB 639, § 1; R.S.1943, (1999), § 81-2601; Laws 2002, LB 1105, § 339; Laws 2008, LB823, § 17.  
Effective date July 18, 2008.

**86-570 Geographic Information Systems Council; created; members; appointment; terms; expenses.**

(1) The Geographic Information Systems Council is hereby created and shall consist of:

(a) The Chief Information Officer or his or her designee, the chief executive officer or designee of the Department of Health and Human Services, and the director or designee of the Department of Environmental Quality, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

(b) The Director-State Engineer or designee;

(c) The State Surveyor or designee;

(d) The Clerk of the Legislature or designee;

(e) The secretary of the Game and Parks Commission or designee;

(f) The Property Tax Administrator or designee;

(g) One representative of federal agencies appointed by the Governor;

(h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

(i) One representative of the public power districts appointed by the Governor;

(j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

(k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor;

(l) Two members at large appointed by the Governor; and

(m) Such other members as nominated by the Nebraska Information Technology Commission and appointed by the Governor.

(2) The appointed members shall serve terms as determined by the Nebraska Information Technology Commission.

(3) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1991, LB 639, § 2; Laws 1993, LB 3, § 72; Laws 1998, LB 924, § 48; Laws 1999, LB 594, § 71; Laws 2000, LB 900, § 250; R.S.Supp.,2000, § 81-2602; Laws 2002, LB 1105, § 340; Laws 2006, LB 921, § 28; Laws 2007, LB296, § 812; Laws 2008, LB797, § 29; Laws 2008, LB823, § 18.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 797, section 29, with LB 823, section 18, to reflect all amendments.

**Note:** Changes made by LB 797 became operative July 18, 2008. Changes made by LB 823 became effective July 18, 2008.

#### **86-571 Council; officers; advisory committees; meetings; expenses.**

(1) The Geographic Information Systems Council shall elect a chairperson from its members and such other officers as the council deems necessary.

(2) As the need arises, advisory committees may be established by the council from various levels of government, industry, or the general public to assist the council. The members of advisory committees shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council shall meet quarterly or upon the call of the chairperson.

**Source:** Laws 1991, LB 639, § 3; Laws 1999, LB 238, § 2; R.S.1943, (1999), § 81-2603; Laws 2002, LB 1105, § 341; Laws 2008, LB823, § 19.

Effective date July 18, 2008.

#### **86-572 Council; duties.**

The Geographic Information Systems Council shall:

(1) Make recommendations to the Legislature and the Nebraska Information Technology Commission for program initiatives and funding;

(2) Establish guidelines and policies for statewide Geographic Information Systems operations and management to include:

(a) The acquisition, development, maintenance, quality assurance such as standards, access, ownership, cost recovery, and priorities of data bases;

(b) The compatibility, acquisition, and communications of hardware and software;

(c) The assessment of needs, identification of scope, setting of standards, and determination of an appropriate enforcement mechanism;

(d) The fostering of training programs and promoting education and information about Geographic Information Systems; and

(e) The promoting of Geographic Information Systems development in the State of Nebraska and providing or coordinating additional support to address Geographic Information Systems issues as such issues arise;

(3) Report to, assist, and advise the Chief Information Officer in setting information technology policy; and

(4) Provide assistance as requested by the commission and support the technical panel created in section 86-521.

**Source:** Laws 1991, LB 639, § 4; Laws 1998, LB 924, § 49; Laws 1999, LB 446, § 11; R.S.1943, (1999), § 81-2604; Laws 2002, LB 1105, § 342; Laws 2005, LB 343, § 11; Laws 2008, LB823, § 20. Effective date July 18, 2008.

**86-573 Council; report.**

The Geographic Information Systems Council shall provide a report of its activities to the Nebraska Information Technology Commission for inclusion in the biannual progress report submitted to the Governor and the Legislature by the commission pursuant to section 86-518.

**Source:** Laws 1991, LB 639, § 5; Laws 1998, LB 924, § 50; R.S.1943, (1999), § 81-2605; Laws 2002, LB 1105, § 343; Laws 2008, LB823, § 21. Effective date July 18, 2008.

(e) PUBLICLY OWNED DARK FIBER

**86-574 Dark fiber, defined.**

For purposes of sections 86-574 to 86-578, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

**Source:** Laws 2001, LB 827, § 1; R.S.Supp.,2001, § 86-2301; Laws 2002, LB 1105, § 344.

**86-575 Agency or political subdivision; dark fiber; disposition; powers.**

(1) Any agency or political subdivision of the state may:

(a) Own dark fiber;

(b) Sell dark fiber pursuant to section 86-576; and

(c) Lease dark fiber pursuant to section 86-577.

(2) Any agency or political subdivision which sells or leases its dark fiber pursuant to sections 86-574 to 86-578 shall not be deemed to be providing telecommunications services as defined in section 86-593.

**Source:** Laws 2001, LB 827, § 2; R.S.Supp.,2001, § 86-2302; Laws 2002, LB 1105, § 345; Laws 2005, LB 645, § 9.

Under former law, subsection (2) of this section is preempted by federal law and is unconstitutional. In re Application of Lincoln Electric System, 265 Neb. 70, 655 N.W.2d 363 (2003).

**86-576 Agency or political subdivision; dark fiber; sale.**

Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

**Source:** Laws 2001, LB 827, § 3; R.S.Supp.,2001, § 86-2303; Laws 2002, LB 1105, § 346.

**86-577 Agency or political subdivision; dark fiber; lease.**

Any agency or political subdivision of the state may lease its dark fiber if:

(1) The lessee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to section 86-128 or an Internet service provider;

(2) The lease price and profit distribution is approved by the Public Service Commission as follows:

(a) The commission shall not approve any lease price which is less than the market rate for leasing such fiber as determined by the commission. The market rate is the price associated with similar unbundled network elements that may be available from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or similar territory where the leased equipment is located. Before entering into a lease, each agency or political subdivision shall file a request with the commission for a competitive price comparison to determine the market rate. When conducting a competitive price comparison, the commission in its discretion shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary;

(b) The commission shall not approve any lease price which is agreed upon by the agency or political subdivision and the lessee unless the lease requires that the agency or political subdivision be solely responsible for the maintenance of its dark fiber and that the lessee be responsible, on a pro rata basis, for any such maintenance costs; and

(c) The commission shall not approve any lease unless fifty percent of the profit earned by the agency or political subdivision under the lease is remitted to the Nebraska Internet Enhancement Fund. Profit earned by the agency or political subdivision is the lease price less the cost of infrastructure overbuilding. Before entering into a lease, each agency or political subdivision shall file a request with the commission to determine the cost of overbuilding its fiber optic infrastructure. For purposes of this subdivision, cost of infrastructure overbuilding means the cost of each leased optic fiber, including the cost, on a pro rata basis, associated with the agency's or political subdivision's installation of such fiber;

(3) Any interconnection agreement subject to section 86-122 is approved by the commission; and

(4) The lessee makes every reasonable effort to activate the maximum amount of the leased fiber as is possible, within one year after entering into the lease, unless good cause is shown.

**Source:** Laws 2001, LB 827, § 4; R.S.Supp.,2001, § 86-2304; Laws 2002, LB 1105, § 347.

**86-578 Dark fiber; violation; procedure; appeal.**

In an original action concerning a violation of any provision of sections 86-574 to 86-578 by an agency or political subdivision of the state, the Public Service Commission shall have the jurisdiction set forth in section 75-132.01. After all administrative remedies before the Public Service Commission have been exhausted, an appeal may be brought by an interested party. Such appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2001, LB 827, § 5; R.S.Supp.,2001, § 86-2305; Laws 2002, LB 1105, § 348; Laws 2003, LB 187, § 32.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

(f) INTERNET ENHANCEMENT

**86-579 Nebraska Internet Enhancement Fund; created; use; investment.**

The Nebraska Internet Enhancement Fund is created. The fund shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the Legislature that two hundred fifty thousand dollars shall be appropriated to the fund to be used for startup costs and seed money for FY2001-02. The Public Service Commission may receive gifts, contributions, property, and equipment from public and private sources for purposes of the fund. The fund shall consist of money appropriated by the Legislature, any money transferred pursuant to section 86-127, and gifts, grants, or bequests from any source, including money remitted to the fund pursuant to section 86-577 and any other federal, state, public, and private sources. Money in the fund shall be distributed by the commission pursuant to section 86-580. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Internet Enhancement 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.

The State Treasurer shall transfer one hundred thousand dollars from the Nebraska Internet Enhancement Fund to the General Fund on or before July 15, 2003.

**Source:** Laws 2001, LB 827, § 6; R.S.Supp.,2001, § 86-2306; Laws 2002, LB 1105, § 349; Laws 2002, LB 1211, § 26; Laws 2003, LB 408, § 8.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**86-580 Nebraska Internet Enhancement Fund; financial assistance; application process.**

(1) The Public Service Commission shall establish an application process through which any county or municipality in the state may apply for financial assistance from the Nebraska Internet Enhancement Fund. The process shall allow the county or municipality to obtain a service provider for broadband or other advanced telecommunications services in an exchange or other area defined by the county or municipality where such telecommunications services are to be delivered at rates of service agreed upon between the service provider and county or municipality. The application shall state the projected cost, identify the service provider, describe the process for selection of the service provider, list terms and considerations of any agreement between the applicant and the service provider, and include other information as required by the commission.

(2) The commission shall not provide assistance unless (a) the service provider is an eligible service provider of telecommunications, video, Internet, or other related services as determined by rule and regulation of the commission and (b) the applicant can provide matching funds of at least twenty-five percent of the total projected cost.

(3) The commission shall establish a system to prioritize applications. Highest priority shall be given to applicants based on high-cost factors, including population scarcity and location remoteness. Other factors, including financial need, may be considered by the commission as deemed necessary.

(4) Funds for financial assistance to counties and municipalities may be distributed by the commission on and after January 1, 2002. Funds committed for future use are deemed to be used in the year committed.

**Source:** Laws 2001, LB 827, § 7; R.S.Supp.,2001, § 86-2307; Laws 2002, LB 1105, § 350.

(g) COUNTY TELEPHONE SYSTEMS

**86-581 Repealed. Laws 2005, LB 645, § 11.**

**86-582 Repealed. Laws 2005, LB 645, § 11.**

**86-583 Repealed. Laws 2005, LB 645, § 11.**

**86-584 Repealed. Laws 2005, LB 645, § 11.**

**86-585 Repealed. Laws 2005, LB 645, § 11.**

**86-586 Repealed. Laws 2005, LB 645, § 11.**

**86-587 Repealed. Laws 2005, LB 645, § 11.**

**86-588 Repealed. Laws 2005, LB 645, § 11.**

**86-589 Repealed. Laws 2005, LB 645, § 11.**

**86-590 Repealed. Laws 2005, LB 645, § 11.**

**86-591 Repealed. Laws 2005, LB 645, § 11.**

**86-592 Repealed. Laws 2005, LB 645, § 11.**

## (h) RETAIL OR WHOLESALE SERVICES

**86-593 Terms, defined.**

For purposes of sections 86-593 to 86-599:

(1) Broadband services means the offering of a capability for high-speed broadband telecommunications capability at a speed or bandwidth in excess of two hundred kilobits per second that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology;

(2) Internet services means the offering of Internet service provider services, providing voice over Internet protocol services, or providing Internet protocol-based video services;

(3) Public power supplier means a public power district, a public power and irrigation district, a municipal electric system, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service;

(4) Telecommunications has the same meaning as telecommunications defined in section 86-117;

(5) Telecommunications services has the same meaning as telecommunications service defined in section 86-121; and

(6) Video services means the delivery of any subscription video service except those described in section 70-625.

**Source:** Laws 2005, LB 645, § 1.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Municipal Cooperative Financing Act**, see section 18-2401.

**86-594 Agency or political subdivision of state; limitation on power.**

(1) Except as provided in the Educational Service Units Act and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, 85-1501 to 85-1542, and 86-575, an agency or political subdivision of the state that is not a public power supplier shall not provide on a retail or wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which an agency or political subdivision of the state was authorized to provide and was providing prior to January 1, 2005.

**Source:** Laws 2005, LB 645, § 2.

**Cross References**

**Educational Service Units Act**, see section 79-1201.

**86-595 Public power supplier; limitation on retail services.**

(1) A public power supplier shall not provide on a retail basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which a public power supplier was authorized to provide and was providing prior to January 1, 2005.

**Source:** Laws 2005, LB 645, § 3.

**86-596 Public power supplier; limitation on wholesale services; termination.**

(1) A public power supplier shall not provide on a wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) This section terminates on December 31, 2007.

**Source:** Laws 2005, LB 645, § 4.

Termination date December 31, 2007.

**86-597 Retail or wholesale service; how construed.**

(1) For purposes of sections 86-594 to 86-596, providing a service on a retail or wholesale basis shall not include an agency or political subdivision of the state, whether or not a public power supplier, deploying or utilizing broadband services, Internet services, telecommunications services, or video services, for its own use either individually or jointly through the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act for the internal use and purpose of the agency, political subdivision, or public power supplier or to carry out the public purposes of the agency, political subdivision, or public power supplier.

(2) Nothing in sections 86-593 to 86-599 prohibits or restricts the ability of an agency, political subdivision, or public power supplier from deploying or utilizing broadband services, Internet services, telecommunications services, or video services for the internal use and purpose of the agency, political subdivision, or public power supplier, or to carry out the public purposes of the agency, political subdivision, or public power supplier.

**Source:** Laws 2005, LB 645, § 5.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Municipal Cooperative Financing Act**, see section 18-2401.

**86-598 Sections; how construed.**

Except as otherwise provided in sections 86-595 and 86-596, nothing in sections 86-593 to 86-599 shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to September 4, 2005.

**Source:** Laws 2005, LB 645, § 6.

**86-599 Broadband Services Task Force; created; members; duties.**

(1) The Broadband Services Task Force is created. The members shall be appointed as follows:

(a) Three members appointed by the Executive Board of the Legislative Council;

(b) Six members appointed by the Governor, of whom one member shall be appointed from each congressional district and shall represent consumers and three members shall be appointed on an at-large basis;

(c) Three members of the Public Service Commission;

(d) Three members of the Nebraska Power Review Board or their designees; and

(e) Three members of the Nebraska Information Technology Commission or their designees.

(2) Appointments under this section shall be completed within thirty days after September 4, 2005, and reported to the Executive Board of the Legislative Council. The chairperson of the executive board shall convene the first meeting of the task force within forty-five days after the appointments are reported, and the task force shall select a chairperson at such time.

(3) On behalf of the task force, the Executive Board of the Legislative Council shall, in consultation with the task force, contract for the services of a meeting facilitator and such other assistance as the executive board, in consultation with the task force, deems necessary within the limits of the funds appropriated. In making its selection of a meeting facilitator, the executive board shall consider experience in the areas of telecommunications and public power.

(4) Issues to be studied by the task force shall include, but are not limited to:

(a) The implications upon competition of agencies or political subdivisions of the state or public power suppliers offering infrastructure access for broadband services, Internet services, telecommunications services, and video services and private sector investment in networks for the provision of such services;

(b) The need and necessity for the provision of wholesale broadband services, Internet services, telecommunications services, or video services by agencies or political subdivisions of the state and public power suppliers;

(c) Issues regarding the establishment of fair and equitable requirements for the regulation and taxation of the provision of wholesale broadband services, Internet services, telecommunications services, and video services by agencies or political subdivisions of the state and public power suppliers;

(d) An assessment of the extent and availability of public power infrastructure in the state and an evaluation of how such infrastructure could be utilized to enhance the provision of broadband services, Internet services, telecommunications services, and video services to consumers and businesses and the feasibility of using such technology in all regions of the state;

(e) A determination of how parity could be established for competing interests in the provision of broadband services, Internet services, telecommunications services, and video services, including, but not limited to, the amount of property taxes paid, income taxes, in lieu of tax payments paid, gross receipts taxes, sales taxes paid, tax credits and funds provided under current federal and state laws, and financing capabilities, including shareholder equity;

(f) An evaluation of the statutory and regulatory frameworks of other states' publicly owned utilities as they relate to providing broadband services, Internet services, telecommunications services, and video services; and

(g) An analysis of the geographic areas in which broadband services, Internet services, telecommunications services, and video services are being offered in the state, the degree of regulation and competition with respect to each such service within such geographic areas, and the implications of permitting agencies, political subdivisions, and public power suppliers to provide such services on the geographic reach of such services and the degree of competition in such geographic areas.

(5) The task force shall study the issues described in subsection (4) of this section, identify options for the resolution of such issues, and make recommendations to the Legislature and the Governor relating to any policy changes the

task force deems desirable. The task force shall complete its work by December 1, 2006, and submit its report to the Legislature, the Governor, the Natural Resources Committee of the Legislature, and the Transportation and Telecommunications Committee of the Legislature by such date.

(6) This section terminates on December 1, 2006.

**Source:** Laws 2005, LB 645, § 7.

Termination date December 1, 2006.

(i) NETWORK NEBRASKA

**86-5,100 Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost.**

The Chief Information Officer, in partnership with the University of Nebraska, shall develop and maintain a statewide, multipurpose, high capacity, scalable telecommunications network to be called Network Nebraska. The network shall consist of contractual arrangements with providers to meet the demand of state agencies, local governments, and educational entities as defined in section 79-1201.01. Such network shall provide access to a reliable and affordable infrastructure capable of carrying a spectrum of services and applications, including distance education, across the state. The Chief Information Officer shall provide access to each school district, each educational service unit, each community college, each state college, and the University of Nebraska at the earliest feasible date and no later than July 1, 2012. Access may be provided through educational service units or other aggregation points. The Chief Information Officer shall aggregate demand for those state agencies and educational entities choosing to participate and shall reduce costs for participants whenever feasible. The Chief Information Officer shall establish a cost structure based on actual costs plus administrative expenses and shall charge participants according to such cost structure.

**Source:** Laws 2006, LB 1208, § 30; Laws 2007, LB603, § 33.

**86-5,101 State Department of Education; provide funding for Network Nebraska; use; repayment; applications; contents; denial; appeal.**

(1) For fiscal years 2007-08 through 2009-10, the State Department of Education shall provide temporary funding for aggregation routing equipment and network transport costs for Network Nebraska to the Chief Information Officer from the School District Reorganization Fund as provided in this section. Such temporary funding shall be for the purchase of aggregation routing equipment, installation costs for such equipment, and network transport for Network Nebraska and shall be repaid to the Education Innovation Fund on or before June 30, 2010, by the Chief Information Officer from funds collected for the administration of Network Nebraska. The total temporary funding provided pursuant to this section shall be limited to two hundred thousand dollars. Applications jointly submitted by the Chief Information Officer and the University of Nebraska shall be accepted by the department beginning on May 31, 2007. Applications shall be on a form specified by the department and shall include a description of the aggregation routing equipment to be purchased, a description of how the aggregation routing equipment will be used for distance education, the network transport costs to be supported, and a timeline for repayment to the School District Reorganization

Fund. Late repayments shall accrue interest at the rate prescribed in section 45-104.02 from the date of the initial receipt of temporary funding.

(2) The Chief Information Officer or the University of Nebraska may appeal the denial of temporary funding for aggregation routing equipment and network transport costs for Network Nebraska or the assessment of interest to the State Board of Education. The board shall allow a representative of the Chief Information Officer or the University of Nebraska an opportunity to present information concerning the appeal to the board at the first board meeting after the filing of such appeal. If the board finds that the department denied the temporary funding in error, the department shall pay the Chief Information Officer from the School District Reorganization Fund as soon as practical the amount which was denied in error. If the board finds that the department erred in assessing interest, such assessment of interest shall be corrected.

(3) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2007, LB603, § 34.

## ARTICLE 6

### ELECTRONIC INFORMATION

#### Cross References

**Libel or slander actions**, measure of damages, see sections 25-840 and 25-840.01.

#### (a) TELEGRAPH COMPANIES

##### Section

- 86-601. Telegraph companies; laws governing.
- 86-602. Telegraph companies and press associations; statement; filing.
- 86-603. Certificate of authority; fee; issuance; effect.
- 86-604. Telegraph companies and press associations; statement; failure to register; penalty.
- 86-605. Dispatches; transmission; duties.
- 86-606. Dispatches; unlawful delay or disclosure; penalty.
- 86-607. Dispatches; rates; violation; penalty.
- 86-608. Dispatches; duties; violation; penalty.
- 86-609. Dispatches; unlawful delay or refusal; nondelivery of notice; violation; penalty.
- 86-610. Dispatches; nondelivery; mistakes; liability.

#### (b) DIGITAL SIGNATURE

- 86-611. Digital and electronic signatures and electronic communications authorized; rules and regulations.

#### (c) UNIFORM ELECTRONIC TRANSACTIONS ACT

- 86-612. Act, how cited.
- 86-613. Definitions, where found.
- 86-614. Agreement, defined.
- 86-615. Automated transaction, defined.
- 86-616. Computer program, defined.
- 86-617. Contract, defined.
- 86-618. Electronic, defined.
- 86-619. Electronic agent, defined.
- 86-620. Electronic record, defined.
- 86-621. Electronic signature, defined.
- 86-622. Governmental agency, defined.
- 86-623. Information, defined.
- 86-624. Information processing system, defined.
- 86-625. Person, defined.
- 86-626. Record, defined.

## Section

- 86-627. Security procedure, defined.
- 86-628. State, defined.
- 86-629. Transaction, defined.
- 86-630. Applicability of act.
- 86-631. Prospective application.
- 86-632. Use of electronic records and electronic signatures; variation by agreement.
- 86-633. Construction and application.
- 86-634. Legal recognition of electronic records, electronic signatures, and electronic contracts.
- 86-635. Provision of information in writing; presentation of records.
- 86-636. Attribution and effect of electronic record and electronic signature.
- 86-637. Effect of change or error.
- 86-638. Notarization and acknowledgment.
- 86-639. Retention of electronic records; originals.
- 86-640. Admissibility in evidence.
- 86-641. Automated transaction.
- 86-642. Time and place of sending and receipt.
- 86-643. Transferable records.

## (d) ELECTRONIC POSTMARK

- 86-644. Electronic postmark; use by state agency; authorized.

## (a) TELEGRAPH COMPANIES

**86-601 Telegraph companies; laws governing.**

All associations organized or incorporated under the laws of this state, by and under authority of any other state, or by authority of the United States, whose object and purpose is the transmission, collection, and distribution of dispatches by telegraph, are subject to sections 86-602 to 86-610.

**Source:** Laws 1883, c. 80, § 1, p. 321; R.S.1913, § 7395; C.S.1922, § 7070; C.S.1929, § 86-101; R.S.1943, § 86-101; R.S.1943, (1999), § 86-101; Laws 2002, LB 1105, § 363.

**86-602 Telegraph companies and press associations; statement; filing.**

Every telegraph company and every press association or corporation engaged in the transmission, collection, distribution, or delivery of telegraph dispatches, either for private use or for publication in newspapers, shall file in the office of the Secretary of State a statement, a copy of its articles of incorporation or other articles of organization, and a copy of its regulations and bylaws. The statement shall be certified under oath by the president and secretary or by two of the officers and shall contain: (1) The name of the association; (2) the amount of capital invested; and (3) the character of its business.

**Source:** Laws 1883, c. 80, § 2, p. 322; R.S.1913, § 7396; C.S.1922, § 7071; C.S.1929, § 86-102; R.S.1943, § 86-102; Laws 1993, LB 121, § 549; R.S.1943, (1999), § 86-102; Laws 2002, LB 1105, § 364.

**86-603 Certificate of authority; fee; issuance; effect.**

The Secretary of State shall issue a certificate to every company, association, or corporation that has filed the statement required by section 86-602 and has paid a filing fee of five dollars. The certificate conveys authority to such

company, association, or corporation to conduct its business within this state under sections 86-607 to 86-610.

**Source:** Laws 1883, c. 80, § 3, p. 322; R.S.1913, § 7397; C.S.1922, § 7072; C.S.1929, § 86-103; R.S.1943, § 86-103; R.S.1943, (1999), § 86-103; Laws 2002, LB 1105, § 365.

**86-604 Telegraph companies and press associations; statement; failure to register; penalty.**

Every telegraph company, and press association or corporation engaged in the transmission, collection, and delivery of telegraph dispatches, that refuses or fails to comply with section 86-602 shall forfeit its right to carry on the collection, transmission, and delivery of dispatches for publication or for private use and shall forfeit to the county where such business is conducted one thousand dollars for each violation of sections 86-601 to 86-603. Each day a violation continues constitutes a separate violation. The county attorney shall prosecute such violations at the expense of the county where the violations occurred.

**Source:** Laws 1883, c. 80, § 4, p. 322; R.S.1913, § 7398; C.S.1922, § 7073; C.S.1929, § 86-104; R.S.1943, § 86-104; R.S.1943, (1999), § 86-104; Laws 2002, LB 1105, § 366.

**86-605 Dispatches; transmission; duties.**

All telegraph companies and press associations or corporations operating telegraph lines in this state shall (1) transmit and forward all dispatches directed to newspapers, private individuals, or public officers with impartiality in the order in which they are received and (2) use due diligence in their delivery without discrimination as to any person or party to whom they may be directed.

**Source:** Laws 1883, c. 80, § 5, p. 323; R.S.1913, § 7399; C.S.1922, § 7074; C.S.1929, § 86-105; R.S.1943, § 86-105; R.S.1943, (1999), § 86-105; Laws 2002, LB 1105, § 367.

A telegraph company is liable for failure to deliver message promptly when contents show importance. Western Union Tel. Co. v. Church, 3 Neb. Unof. 22, 90 N.W. 878 (1902).

**86-606 Dispatches; unlawful delay or disclosure; penalty.**

(1) It is unlawful for any officer or employee of any telegraph company, or press association or corporation engaged in the transmission of dispatches, to willfully delay the transmission or delivery of any dispatch, or to willfully divulge the contents of any dispatch entrusted to his or her care, to any person except the party entitled to receive such dispatch.

(2) A violation of this section is a Class III misdemeanor.

**Source:** Laws 1883, c. 80, § 6, p. 323; R.S.1913, § 7400; C.S.1922, § 7075; C.S.1929, § 86-106; R.S.1943, § 86-106; Laws 1977, LB 39, § 320; R.S.1943, (1999), § 86-106; Laws 2002, LB 1105, § 368.

**86-607 Dispatches; rates; violation; penalty.**

(1) Except as otherwise provided in this section, it is unlawful for any telegraph company, its agents, or its operators to demand, charge, or receive

from any individual, association, or corporation a greater sum for the transmission and delivery of any telegram or message over a given distance than it demands, charges, or receives for the transmission and delivery of any telegram or message containing an equal number of words over a greater distance. A dispatch transmitted during the night and a dispatch for publication in a newspaper may be forwarded and delivered at reduced rates if such rates are uniform for the same service.

(2) It is unlawful for any telegraph company, or press association or organization engaged in the business of forwarding dispatches by telegraph, to demand, collect, or receive from any publisher or proprietor of a newspaper any greater sum for a given service than it demands, charges, or collects from the publisher or proprietor of any other newspaper for a like service.

(3) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization shall be liable for all damages sustained by the person or party as a result of such discrimination.

**Source:** Laws 1883, c. 80, § 7, p. 323; R.S.1913, § 7401; C.S.1922, § 7076; C.S.1929, § 86-107; R.S.1943, § 86-107; R.S.1943, (1999), § 86-107; Laws 2002, LB 1105, § 369.

In order to constitute an unjust discrimination, there must be a difference in rates under substantially similar circumstances as to services. *Western Union Tel. Co. v. Call Pub. Co.*, 58 Neb. 192, 78 N.W. 519 (1899), 44 Neb. 326, 62 N.W. 506 (1895).

#### **86-608 Dispatches; duties; violation; penalty.**

(1) Any telegraph company, and press association or organization engaged in the transmission, collection, distribution, or publication of dispatches, shall afford the same and equal facilities to all publishers of newspapers and shall furnish the dispatches collected by them for publication in any given locality to all newspapers published in such locality on the same conditions as to payment and delivery.

(2) A violation of this section is a Class II misdemeanor. In addition, such telegraph company or press association or organization and its members shall be jointly and severally liable for all damages sustained by the owner of any newspaper as a result of such discrimination.

**Source:** Laws 1883, c. 80, § 9, p. 324; R.S.1913, § 7403; C.S.1922, § 7078; C.S.1929, § 86-109; R.S.1943, § 86-109; R.S.1943, (1999), § 86-109; Laws 2002, LB 1105, § 370.

#### **86-609 Dispatches; unlawful delay or refusal; nondelivery of notice; violation; penalty.**

(1) It is unlawful for any telegraph company, any press association or organization engaged in the transmission of telegraph dispatches from any place in this state, or the person having the control or management of the company, association, or organization, to refuse to receive a dispatch from any person, corporation, or telegraph company or to refuse to transmit the dispatch with fidelity and without unreasonable delay.

(2) Upon application to send a dispatch, any telegraph company or its operator, agent, clerk, or servant shall inform the applicant, and write upon the dispatch if required by him or her, that the line is not in working order or that the dispatches already on hand for transmission will occupy the line so that the dispatch offered cannot be transmitted within the time required, if applicable. It is unlawful for any telegraph company or its operator, agent, clerk, or

servant to omit or to intentionally give false information to the applicant in relation to the time within which the dispatch offered may be sent.

(3) A violation of this section is a Class V misdemeanor. In addition, such company, association, corporation, or person shall be liable for damages to the person or corporation sustaining a loss by reason of such refusal or failure.

**Source:** Laws 1883, c. 80, § 11, p. 324; R.S.1913, § 7405; C.S.1922, § 7080; C.S.1929, § 86-111; R.S.1943, § 86-111; R.S.1943, (1999), § 86-111; Laws 2002, LB 1105, § 371.

#### **86-610 Dispatches; nondelivery; mistakes; liability.**

Any telegraph company is liable for the nondelivery of dispatches entrusted to its care, for mistakes in transmitting messages made by its employee or agent, and for damages resulting from a failure to perform any other duty required by law. Such telegraph company shall not be exempted from such liability by reason of any clause, condition, or agreement contained in its printed blanks.

**Source:** Laws 1883, c. 80, § 12, p. 325; R.S.1913, § 7406; C.S.1922, § 7081; C.S.1929, § 86-112; R.S.1943, § 86-112; R.S.1943, (1999), § 86-112; Laws 2002, LB 1105, § 372.

Message was sufficient on its face to apprise company that failure to transmit promptly might result in substantial loss, and recovery of damages was affirmed. *C. B. Nash Co. v. Western Union Tel. Co.*, 98 Neb. 210, 152 N.W. 387 (1915).

Company is liable for failure to transmit correctly and deliver message, notwithstanding agreement printed on blank to contrary. *American Express Co. v. Postal Telegraph-Cable Co.*, 97 Neb. 701, 151 N.W. 240 (1915); *Western Union Tel. Co. v. Beals*, 56 Neb. 415, 76 N.W. 903 (1898); *Pacific Tel. Co. v. Underwood*, 37 Neb. 315, 55 N.W. 1057 (1893).

Unless the language of the message itself discloses that special loss will probably result from failure to transmit, measure of damages will not exceed cost of transmission. *Smith v. Western Union Tel. Co.*, 80 Neb. 395, 114 N.W. 288 (1907).

Where telegraph company failed to deliver message resulting in loss of sale of corn, measure of damages was difference between contract price and its market value. *Western Union Tel. Co. v. Nye & Schneider Co.*, 70 Neb. 251, 97 N.W. 305 (1903).

Telephone company was liable for loss of profits which would have been made on exchange of land for failure to deliver message. *Western Union Tel. Co. v. Wilhelm*, 48 Neb. 910, 67 N.W. 870 (1896).

Provisions are obligatory upon all telegraph companies in the state. *Western Union Tel. Co. v. Kemp*, 44 Neb. 194, 62 N.W. 451 (1895).

Section 86-112 (recodified in 2002 as section 86-610) is constitutional. *Western Union Tel. Co. v. Lowrey*, 32 Neb. 732, 49 N.W. 707 (1891).

Requirements are reasonable, and cover interstate messages. *Kemp v. Western Union Tel. Co.*, 28 Neb. 661, 44 N.W. 1064 (1890).

Copy of telegram received at office of destination is not admissible in evidence without proof of authenticity. *Yeiser v. Cathers*, 5 Neb. Unof. 204, 97 N.W. 840 (1903).

### (b) DIGITAL SIGNATURE

#### **86-611 Digital and electronic signatures and electronic communications authorized; rules and regulations.**

(1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic transactions. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic transactions are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) In any written communication in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (a) It is unique to the person using it;
- (b) It is capable of verification;

- (c) It is under the sole control of the person using it;
  - (d) It is linked to data in such a manner that if the data is changed, the digital signature is invalidated; and
  - (e) It conforms to rules and regulations adopted and promulgated by the Secretary of State.
- (3) In any communication in which a signature is required or used, a state agency or political subdivision may accept a digital signature or an electronic signature and may accept the communication in electronic format. Any use of a digital signature, an electronic signature, or an electronic communication by a court is subject to the rules of the Supreme Court.
- (4) The Secretary of State shall adopt and promulgate rules and regulations to carry out this section which:
- (a) Identify and define the type of signature which may be used in the electronic communications governed by the rules and regulations;
  - (b) Identify and define the type of electronic communications for which a digital signature or an electronic signature may be used; and
  - (c) Provide a degree of security reasonably related to the risks and consequences of fraud or misuse for the type of electronic communication which, at a minimum, shall require the maintenance of an audit trail of the assignment or approval and the use of the unique access code or unique electronic identifier.
- (5) This section shall not be construed to invalidate digital signatures, electronic signatures, or electronic communications which are valid under any other applicable law.
- (6) Unless otherwise provided by law, the use or acceptance of a digital signature or an electronic signature shall be at the option of the parties to the communication. This section shall not be construed to require a person to use or permit the use of a digital signature or electronic signature.
- (7) In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.
- (8) For purposes of this section:
- (a) Electronic signature means a unique access code or other unique electronic identifier assigned or approved by the state agency for use in communications with the state agency;
  - (b) Digital signature means an electronic identifier, created by computer, intended by the person using it to have the same force and effect as a manual signature; and
  - (c) State agency means any agency, board, court, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

**Source:** Laws 1998, LB 924, § 69; Laws 2000, LB 628, § 4; R.S.Supp.,2000, § 86-1701; Laws 2002, LB 1105, § 373.

### (c) UNIFORM ELECTRONIC TRANSACTIONS ACT

#### **86-612 Act, how cited.**

Sections 86-612 to 86-643 shall be known and may be cited as the Uniform Electronic Transactions Act.

**Source:** Laws 2000, LB 929, § 1; R.S.Supp.,2000, § 86-2101; Laws 2002, LB 1105, § 374.

**86-613 Definitions, where found.**

For purposes of the Uniform Electronic Transactions Act, the definitions found in sections 86-614 to 86-629 apply.

**Source:** Laws 2000, LB 929, § 2; R.S.Supp.,2000, § 86-2102; Laws 2002, LB 1105, § 375.

**86-614 Agreement, defined.**

Agreement means the bargain of the parties in fact as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

**Source:** Laws 2002, LB 1105, § 376.

**86-615 Automated transaction, defined.**

Automated transaction means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

**Source:** Laws 2002, LB 1105, § 377.

**86-616 Computer program, defined.**

Computer program means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

**Source:** Laws 2002, LB 1105, § 378.

**86-617 Contract, defined.**

Contract means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law.

**Source:** Laws 2002, LB 1105, § 379.

**86-618 Electronic, defined.**

Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**Source:** Laws 2002, LB 1105, § 380.

**86-619 Electronic agent, defined.**

Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

**Source:** Laws 2002, LB 1105, § 381.

**86-620 Electronic record, defined.**

Electronic record means a record created, generated, sent, communicated, received, or stored by electronic means.

**Source:** Laws 2002, LB 1105, § 382.

**86-621 Electronic signature, defined.**

Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Source:** Laws 2002, LB 1105, § 383.

**86-622 Governmental agency, defined.**

Governmental agency means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or a county, municipality, or other political subdivision of a state.

**Source:** Laws 2002, LB 1105, § 384.

**86-623 Information, defined.**

Information means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

**Source:** Laws 2002, LB 1105, § 385.

**86-624 Information processing system, defined.**

Information processing system means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

**Source:** Laws 2002, LB 1105, § 386.

**86-625 Person, defined.**

Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

**Source:** Laws 2002, LB 1105, § 387.

**86-626 Record, defined.**

Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Source:** Laws 2002, LB 1105, § 388.

**86-627 Security procedure, defined.**

Security procedure means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

**Source:** Laws 2002, LB 1105, § 389.

**86-628 State, defined.**

State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. State includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

**Source:** Laws 2002, LB 1105, § 390.

**86-629 Transaction, defined.**

Transaction means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

**Source:** Laws 2002, LB 1105, § 391.

**86-630 Applicability of act.**

(1) Except as otherwise provided in subsection (2) of this section, the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

(2) The act does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(b) The Uniform Commercial Code other than article 2 and article 2A.

(3) The act applies to an electronic record or electronic signature otherwise excluded from the application of the act under subsection (2) of this section to the extent it is governed by a law other than those specified in subsection (2) of this section.

(4) A transaction subject to the act is also subject to other applicable substantive law.

**Source:** Laws 2000, LB 929, § 3; R.S.Supp.,2000, § 86-2103; Laws 2002, LB 1105, § 392; Laws 2005, LB 570, § 4.

**86-631 Prospective application.**

The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 13, 2000.

**Source:** Laws 2000, LB 929, § 4; R.S.Supp.,2000, § 86-2104; Laws 2002, LB 1105, § 393.

**86-632 Use of electronic records and electronic signatures; variation by agreement.**

(1) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) The act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in the act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the act of the words “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by the act and other applicable law.

**Source:** Laws 2000, LB 929, § 5; R.S.Supp.,2000, § 86-2105; Laws 2002, LB 1105, § 394.

#### **86-633 Construction and application.**

The Uniform Electronic Transactions Act must be construed and applied:

- (1) To facilitate electronic transactions consistent with other applicable law;
- (2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) To effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

**Source:** Laws 2000, LB 929, § 6; R.S.Supp.,2000, § 86-2106; Laws 2002, LB 1105, § 395.

#### **86-634 Legal recognition of electronic records, electronic signatures, and electronic contracts.**

(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

**Source:** Laws 2000, LB 929, § 7; R.S.Supp.,2000, § 86-2107; Laws 2002, LB 1105, § 396.

#### **86-635 Provision of information in writing; presentation of records.**

(1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than the Uniform Electronic Transactions Act requires a record to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law;

(b) Except as otherwise provided in subdivision (4)(b) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than the act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than the act to send, communicate, or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

**Source:** Laws 2000, LB 929, § 8; R.S.Supp.,2000, § 86-2108; Laws 2002, LB 1105, § 397.

#### **86-636 Attribution and effect of electronic record and electronic signature.**

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

**Source:** Laws 2000, LB 929, § 9; R.S.Supp.,2000, § 86-2109; Laws 2002, LB 1105, § 398.

#### **86-637 Effect of change or error.**

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither subdivision (1) or subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Subdivisions (2) and (3) of this section may not be varied by agreement.

**Source:** Laws 2000, LB 929, § 10; R.S.Supp.,2000, § 86-2110; Laws 2002, LB 1105, § 399.

#### **86-638 Notarization and acknowledgment.**

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

**Source:** Laws 2000, LB 929, § 11; R.S.Supp.,2000, § 86-2111; Laws 2002, LB 1105, § 400.

#### **86-639 Retention of electronic records; originals.**

(1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) of this section by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1) of this section.

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this section.

(6) A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 13, 2000, specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

**Source:** Laws 2000, LB 929, § 12; R.S.Supp.,2000, § 86-2112; Laws 2002, LB 1105, § 401.

#### **86-640 Admissibility in evidence.**

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

**Source:** Laws 2000, LB 929, § 13; R.S.Supp.,2000, § 86-2113; Laws 2002, LB 1105, § 402.

#### **86-641 Automated transaction.**

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(3) The terms of the contract are determined by the substantive law applicable to it.

**Source:** Laws 2000, LB 929, § 14; R.S.Supp.,2000, § 86-2114; Laws 2002, LB 1105, § 403.

#### **86-642 Time and place of sending and receipt.**

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1) of this section, or purportedly received under subsection (2) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

**Source:** Laws 2000, LB 929, § 15; R.S.Supp.,2000, § 86-2115; Laws 2002, LB 1105, § 404.

#### **86-643 Transferable records.**

(1) In this section, transferable record means an electronic record that:

(a) Would be a note under article 3 of the Uniform Commercial Code or a document under article 7 of the Uniform Commercial Code if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f) of this subsection, unalterable;

(b) The authoritative copy identifies the person asserting control as:

(i) The person to which the transferable record was issued; or

(ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4)(a) Prior to July 1, 2001, except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (21) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, Uniform Commercial Code, or section 7-501 or 9-308, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

(b) On or after July 1, 2001, except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (21) of section 1-201, Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under subsection (a) of section 3-302, Uniform Commercial Code, or section 7-501 or 9-330, Uniform Commercial Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subdivision.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

**Source:** Laws 2000, LB 929, § 16; R.S.Supp.,2000, § 86-2116; Laws 2002, LB 1105, § 405; Laws 2005, LB 570, § 5.

(d) ELECTRONIC POSTMARK

**86-644 Electronic postmark; use by state agency; authorized.**

(1) It is the intent of the Legislature to promote economic growth and the efficient operation of business and government in Nebraska through the electronic exchange of information and legally binding electronic communications. In order to facilitate the electronic exchange of information, Nebraska must establish means to ensure that electronic communications are legally binding and enforceable, while ensuring that security measures are in place to prevent opportunities for fraud and misuse.

(2) A state agency may use an email address from any person the state agency regulates or does business with, or an email address from the agent for service of process of that person, for any communication with such person.

(3) A communication postmarked by an electronic postmark provided by the United States Postal Service may be used to verify that a record of a state agency is true and correct. Notwithstanding any other statute to the contrary, a communication postmarked by an electronic postmark by the United States Postal Service may be used by a state agency in lieu of certified mail or certified mail, return receipt requested, in complying with any statutory requirement for providing a communication by certified mail or certified mail, return receipt requested. However, the use or acceptance of an electronic postmark shall be at the option of the parties to the communication and shall require consent by the sender and the receiver of the communication to that method of communication.

(4) This section shall not be construed to require a person or state agency to use or permit the use of an electronic postmark, to authorize the use of an email address for service of process of legal documents upon a party to a lawsuit, or to invalidate electronic communications or verification of such communications which are valid under any other applicable law.

(5) The Secretary of State may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall consider the persons who do not have an email address. In developing the rules and regulations, the Secretary of State shall seek the advice of public and private entities, including the Department of Administrative Services.

(6) For purposes of this section:

(a) Electronic postmark means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Postal Service; and

(b) State agency means any agency, board, court, state postsecondary educational institution, or constitutional officer of the executive, judicial, and legislative branches of state government, except individual members of the Legislature.

**Source:** Laws 2005, LB 11, § 1.

## ARTICLE 7

### TELECOMMUNICATIONS RIGHTS-OF-WAY

#### Cross References

**Interference with lines**, penalty, see section 76-2325.01.

**Transmission lines**, regulation by Public Service Commission, see Chapter 75, article 7.

## Section

- 86-701. Telecommunications rights-of-way; definitions, where found.
- 86-702. Highway, defined.
- 86-703. Telecommunications company, defined.
- 86-704. Telecommunications companies; right-of-way; wires; municipalities; powers and duties.
- 86-705. Right-of-way; condemnation; procedure.
- 86-706. Right-of-way; condemnation; location; costs; abandonment.
- 86-707. Right-of-way; state and federal highways; regulation by Department of Roads.
- 86-708. Telephone lines; notice of widening of roads; when given.
- 86-709. Telephone lines; notice of widening of roads; contents.
- 86-710. Telephone lines; liability; cost of removal.

**86-701 Telecommunications rights-of-way; definitions, where found.**

For purposes of sections 86-701 to 86-710, the definitions found in sections 86-702 and 86-703 apply.

**Source:** Laws 2002, LB 1105, § 406.

**86-702 Highway, defined.**

Highway has the same meaning as in section 60-624.

**Source:** Laws 2002, LB 1105, § 407.

**86-703 Telecommunications company, defined.**

Telecommunications company has the same meaning as in section 86-119.

**Source:** Laws 2002, LB 1105, § 408.

**86-704 Telecommunications companies; right-of-way; wires; municipalities; powers and duties.**

(1) Any telecommunications company, incorporated or qualified to do business in this state, is granted the right to construct, operate, and maintain telecommunications lines and related facilities along, upon, across, and under the public highways of this state, and upon and under lands in this state, whether state or privately owned, except that (a) such lines and related facilities shall be so constructed and maintained as not to interfere with the ordinary use of such lands or of such highways by the public and (b) all aerial wires and cables shall be placed at a height of not less than eighteen feet above all highway crossings.

(2) Sections 86-701 to 86-707 shall not transfer the rights now vested in municipalities in relation to the regulation of the poles, wires, cables, and other appliances or authorize a telecommunications company to erect any poles or construct any conduit, cable, or other facilities along, upon, across, or under a public highway within a municipality without first obtaining the consent of the governing body of the municipality. The municipality shall not exercise any authority over any rights the telecommunications company may have to deliver telecommunications services as authorized by the Public Service Commission or the Federal Communications Commission.

(3) Consent from a governing body for the use of a public highway within a municipality shall be based upon a lawful exercise of its statutory and constitutional authority. Such consent shall not be unreasonably withheld, and a preference or disadvantage shall not be created through the granting or withholding of such consent. A municipality shall not adopt an ordinance that

prohibits or has the effect of prohibiting the ability of a telecommunications company to provide telecommunications service.

(4)(a) A municipality shall not levy a tax, fee, or charge for any right or privilege of engaging in a telecommunications business or for the use by a telecommunications company of a public highway other than:

(i) An occupation tax authorized under section 14-109, 15-202, 15-203, 16-205, or 17-525; and

(ii) A public highway construction permit fee or charge to the extent that the fee or charge applies to all persons seeking use of the public highway in a substantially similar manner. All public highway construction permit fees or charges shall be directly related to the costs incurred by the municipality in providing services relating to the granting or administration of permits. Any highway construction permit fee or charge shall also be reasonably related in time to the occurrence of such costs.

(b) Any tax, fee, or charge imposed by a municipality shall be competitively neutral.

(5) The changes made by Laws 1999, LB 496, shall not be construed to affect the terms or conditions of any franchise, license, or permit issued by a municipality prior to August 28, 1999, or to release any party from any obligations thereunder. Such franchises, licenses, or permits shall remain fully enforceable in accordance with their terms. A municipality may lawfully enter into agreements with franchise holders, licensees, or permittees to modify or terminate an existing franchise, license, or agreement.

(6) Taxes or fees shall not be collected by a municipality through the provision of in-kind services by a telecommunications company, and a municipality shall not require the provision of in-kind services as a condition of consent to the use of a public highway.

(7) The terms of any agreement between a municipality and a telecommunications company regarding use of public highways shall be matters of public record and shall be made available to any member of the public upon request, except that information submitted to a municipality by a telecommunications company which such telecommunications company determines to be proprietary shall be deemed to be a trade secret pursuant to subdivision (3) of section 84-712.05 and shall be accorded full protection from disclosure to third parties in a manner consistent with state law.

**Source:** Laws 1887, c. 87, § 1, p. 634; R.S.1913, § 7418; C.S.1922, § 7097; C.S.1929, § 86-301; Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp.,1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S.1943, § 86-301; Laws 1999, LB 496, § 1; R.S.1943, (1999), § 86-301; Laws 2002, LB 1105, § 409.

Rural telephone company is not a common carrier, subject to railway commission, merely because its poles and wires are on a public highway. *State v. Southern Elkhorn Tel. Co.*, 106 Neb. 342, 183 N.W. 562 (1921).

Telephone company is required to maintain line, where it crosses pasture, at such height and in such condition as not to injure persons and domestic animals. *Coen v. Central Tel. Co.*, 95 Neb. 814, 146 N.W. 998 (1914).

All road crossings refer to private as well as public roads. Traveler is not required to anticipate danger from low-strung

wires. *Weaver v. Dawson County Mut. Tel. Co.*, 82 Neb. 696, 118 N.W. 650 (1908).

Use of city, town, and village streets may be granted by authorities. *City of Plattsmouth v. Nebraska Tel. Co.*, 80 Neb. 460, 114 N.W. 588 (1908).

Suit by taxpayer to prevent city from granting franchise to telephone company must show that granting thereof will increase taxation. *Clark v. Interstate Ind. Tel. Co.*, 72 Neb. 883, 101 N.W. 977 (1904).

Section 86-301 (recodified in 2002 as section 86-704) does not include streets and alleys of a municipal corporation. Nebraska

Tel. Co. v. Western Ind. L. D. Tel. Co., 68 Neb. 772, 95 N.W. 18 (1903).

Property owner is entitled to compensation for burden on his property constituted by erection of line. Company is liable for destruction of and injury to trees. Bronson v. Albion Tel. Co., 67 Neb. 111, 93 N.W. 201 (1903).

Discrimination by telephone company is prohibited. State ex rel. Webster v. Nebraska Tel. Co., 17 Neb. 126, 22 N.W. 237 (1885).

Telegraph company's property within state is subject to state taxation, though company rightfully exercised rights and privileges in nature of franchise from federal government and was engaged in interstate commerce. Western Union Telegraph Co. v. Weaver, 5 F.Supp. 493 (D. Neb. 1932).

### **86-705 Right-of-way; condemnation; procedure.**

Any telecommunications company may enter upon private lands to survey the lands for the purpose of obtaining a right-of-way. Every owner of an interest in private lands to be occupied by any telecommunications lines shall be compensated for any right-of-way appropriated pursuant to sections 86-701 to 86-707. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp.,1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S. 1943, § 86-302; Laws 1951, c. 101, § 123, p. 504; Laws 1999, LB 496, § 2; R.S.1943, (1999), § 86-302; Laws 2002, LB 1105, § 410.

### **86-706 Right-of-way; condemnation; location; costs; abandonment.**

Any right-of-way obtained under sections 86-701 to 86-707 by condemnation proceedings for poles, aerial wires, and aerial cables shall be located only on section boundary lines as established by law or property boundary lines adjoining public highways as established by law. All expense of surveying, court costs, and reasonable attorney's fees shall be paid by the telecommunications company obtaining the right-of-way. If any telecommunications line constructed under sections 86-701 to 86-707 is abandoned for three years, the right-of-way or easement shall revert to the property affected.

**Source:** Laws 1931, c. 158, § 1, p. 419; Laws 1941, c. 193, § 1, p. 762; C.S.Supp.,1941, § 86-301; Laws 1943, c. 231, § 1, p. 778; R.S. 1943, § 86-303; Laws 1999, LB 496, § 3; R.S.1943, (1999), § 86-303; Laws 2002, LB 1105, § 411.

### **86-707 Right-of-way; state and federal highways; regulation by Department of Roads.**

If the right to construct, operate, and maintain the telecommunications lines and related facilities is granted along, upon, across, or under a state or federal highway, the location and installation of such lines and related facilities, insofar as they pertain to the present and future use of the right-of-way for highway purposes, is subject to rules and regulations of the Department of Roads. If the future use of the state or federal highway requires the moving or relocating of the facilities, such facilities shall be removed or relocated by the owner at the owner's cost and expense and as directed by the Department of Roads except as provided by section 39-1304.02.

**Source:** Laws 1943, c. 231, § 1, p. 778; R.S.1943, § 86-303.01; Laws 1957, c. 171, § 3, p. 592; Laws 1999, LB 496, § 4; R.S.1943, (1999), § 86-303.01; Laws 2002, LB 1105, § 412.

### **86-708 Telephone lines; notice of widening of roads; when given.**

Whenever any county or township road construction, widening, repair, or grading project requires, or can reasonably be expected to require, the performance of any work within six feet of any telephone line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least thirty days prior to the start of any work when, because of road construction, widening, repair, or grading, or for any other reason, it is necessary to relocate such line, poles, or anchors.

**Source:** Laws 1957, c. 400, § 1, p. 1368; Laws 1959, c. 181, § 19, p. 662; Laws 1994, LB 421, § 31; R.S.1943, (1999), § 86-334; Laws 2002, LB 1105, § 413.

**86-709 Telephone lines; notice of widening of roads; contents.**

The notice required by section 86-708 shall state the nature and location of the work to be done and the date on which such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as soon as practicable.

**Source:** Laws 1957, c. 400, § 2, p. 1369; R.S.1943, (1999), § 86-335; Laws 2002, LB 1105, § 414.

**86-710 Telephone lines; liability; cost of removal.**

Any owner of any telephone line failing to move its lines, poles, or anchors located near a public highway in accordance with the notice provided by section 86-708 shall be liable to the county or township for the cost of relocating such lines, poles, or anchors. When an owner of such facilities located on private right-of-way is required to move such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any telephone line for loss of use of such line for failure to give the notice required by sections 86-708 and 86-709.

**Source:** Laws 1957, c. 400, § 3, p. 1369; Laws 1971, LB 328, § 1; R.S.1943, (1999), § 86-336; Laws 2002, LB 1105, § 415.

## TRADE PRACTICES

# CHAPTER 87 TRADE PRACTICES

### Article.

1. Trademarks. 87-101 to 87-144.
2. Trade Names. 87-201 to 87-220.
3. Deceptive Trade Practices.
  - (a) Uniform Deceptive Trade Practices Act. 87-301 to 87-306.
  - (b) Automatic Dialing-Announcing Device. 87-307 to 87-312. Repealed.
4. Franchise Practices.
  - (a) Franchise Practices Act. 87-401 to 87-410.
  - (b) Fuel Franchises. 87-411 to 87-414.
5. Trade Secrets Act. 87-501 to 87-507.
6. Invention Development. 87-601 to 87-610.
7. Equipment Business Regulation. 87-701 to 87-711.
8. Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006. 87-801 to 87-807.

## ARTICLE 1

### TRADEMARKS

### Section

- 87-101. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-102. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-103. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-104. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-105. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-106. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-107. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-108. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-109. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-110. Repealed. Laws 1967, c. 627, § 17, p. 2099.  
87-111. Repealed. Laws 2000, LB 626, § 22.  
87-112. Repealed. Laws 2000, LB 626, § 22.  
87-113. Repealed. Laws 2000, LB 626, § 22.  
87-114. Repealed. Laws 2000, LB 626, § 22.  
87-115. Repealed. Laws 2000, LB 626, § 22.  
87-116. Repealed. Laws 2000, LB 626, § 22.  
87-117. Repealed. Laws 2000, LB 626, § 22.  
87-118. Repealed. Laws 2000, LB 626, § 22.  
87-119. Repealed. Laws 2000, LB 626, § 22.  
87-120. Repealed. Laws 2000, LB 626, § 22.  
87-121. Repealed. Laws 2000, LB 626, § 22.  
87-122. Repealed. Laws 2000, LB 626, § 22.  
87-123. Repealed. Laws 2000, LB 626, § 22.  
87-124. Repealed. Laws 2000, LB 626, § 22.  
87-125. Repealed. Laws 2000, LB 626, § 22.  
87-126. Act, how cited.  
87-127. Intent.  
87-128. Terms, defined.  
87-129. Mark; not registered; when.  
87-130. Application for registration; contents.  
87-131. Application; fee; examination; disclaimer; amendments; reapplication; application priorities.  
87-132. Certificate of registration; contents; how treated.

## Section

- 87-133. Registration; term; renewal; renewal fee; prior registration and proceedings.
- 87-134. Registration; assignment; change of name; other recordings.
- 87-135. Public records.
- 87-136. Cancellation from register.
- 87-137. Classification of goods and services; rules and regulations.
- 87-138. Fraudulent representation; liability.
- 87-139. Unauthorized use; liability.
- 87-140. Famous mark; factors; remedies.
- 87-141. Injunction; damages; attorney's fees.
- 87-142. Cancellation or registration of mark; action; procedure.
- 87-143. Common law; construction of act.
- 87-144. Fees; not refundable.

**87-101 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-102 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-103 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-104 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-105 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-106 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-107 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-108 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-109 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-110 Repealed. Laws 1967, c. 627, § 17, p. 2099.**

**87-111 Repealed. Laws 2000, LB 626, § 22.**

**87-112 Repealed. Laws 2000, LB 626, § 22.**

**87-113 Repealed. Laws 2000, LB 626, § 22.**

**87-114 Repealed. Laws 2000, LB 626, § 22.**

**87-115 Repealed. Laws 2000, LB 626, § 22.**

**87-116 Repealed. Laws 2000, LB 626, § 22.**

**87-117 Repealed. Laws 2000, LB 626, § 22.**

**87-118 Repealed. Laws 2000, LB 626, § 22.**

**87-119 Repealed. Laws 2000, LB 626, § 22.**

**87-120 Repealed. Laws 2000, LB 626, § 22.**

**87-121 Repealed. Laws 2000, LB 626, § 22.**

**87-122 Repealed. Laws 2000, LB 626, § 22.**

**87-123 Repealed. Laws 2000, LB 626, § 22.**

**87-124 Repealed. Laws 2000, LB 626, § 22.**

**87-125 Repealed. Laws 2000, LB 626, § 22.****87-126 Act, how cited.**

Sections 87-126 to 87-144 shall be known and may be cited as the Trademark Registration Act.

**Source:** Laws 2000, LB 626, § 1.

**87-127 Intent.**

It is the intent of the Legislature that the Trademark Registration Act provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the federal Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing the Trademark Registration Act.

**Source:** Laws 2000, LB 626, § 2.

**87-128 Terms, defined.**

For purposes of the Trademark Registration Act:

(1) Abandoned mark means that either of the following has occurred:

(a) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or

(b) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark;

(2) Applicant means the person filing an application for registration of a mark under the act and the legal representatives, successors, or assigns of such person;

(3) Dilution means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of (a) competition between the owner of the famous mark and other parties or (b) likelihood of confusion, mistake, or deception;

(4) Mark includes any trademark or service mark, entitled to registration under the act, whether registered or not;

(5) Person and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the act includes an individual, a firm, a partnership, a limited liability company, a corporation, a union, an association, or another organization capable of suing and being sued in a court of law;

(6) Registrant means the person to whom the registration of a mark under the act is issued and the legal representatives, successors, or assigns of such person;

(7) Secretary means the Secretary of State or the designee of the secretary charged with the administration of the act;

(8) Service mark means any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television

programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor;

(9) Trade name means any name used by a person to identify a business or vocation of such person;

(10) Trademark means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown; and

(11) Use means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark. A mark shall be deemed to be in use:

(a) On goods when it is placed in any manner on the goods or other containers, associated displays, or tags or labels or, if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale and the goods are sold or transported in commerce in this state; and

(b) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

**Source:** Laws 2000, LB 626, § 3.

**87-129 Mark; not registered; when.**

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;

(5) Consists of a mark which:

(a) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(b) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(c) Is primarily merely a surname, except that nothing in subdivision (5) of this section shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(6) Consists of or comprises a mark which so resembles a mark registered in this state or a mark previously used by another and not abandoned as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

**Source:** Laws 2000, LB 626, § 4.

**87-130 Application for registration; contents.**

Subject to the limitations set forth in the Trademark Registration Act, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark including, but not limited to, the following information:

(1) The name and business address of the person applying for such registration and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake or to deceive.

The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office, and if so, the applicant shall provide full particulars with respect thereto, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for the refusal or rejection. The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application. The application shall be signed and verified, by oath, affirmation, or declaration subject to perjury laws, by the applicant or by a member of the firm or an officer of the corporation or association applying. The application shall be submitted in duplicate and shall be accompanied by three specimens showing the mark as actually used and by the application fee of one hundred dollars payable to the secretary.

**Source:** Laws 2000, LB 626, § 5.

**87-131 Application; fee; examination; disclaimer; amendments; reapplication; application priorities.**

(1) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with the Trademark Registration Act.

(2) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary upon the application submitted by the applicant upon the applicant's agreement, or a new application may be required to be submitted.

(5) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until:

(a) The secretary finally refuses registration of the mark; or

(b) The applicant fails to reply or amend within the specified period, whereupon the application shall be considered abandoned.

(6) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with section 87-136.

**Source:** Laws 2000, LB 626, § 6.

#### **87-132 Certificate of registration; contents; how treated.**

Upon compliance by the applicant with the requirements of the Trademark Registration Act, the secretary shall return the duplicate copy of the application stamped with the filing date to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date, and the term of the registration. An original, a duplicate

original, or a certified copy of an application for trademark which has the file stamp and date of the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state. Registration of a mark with the secretary shall be prima facie evidence of the right to use the mark shown in the registration on or in connection with the class or classes of goods or services designated in the registration.

**Source:** Laws 2000, LB 626, § 7.

**87-133 Registration; term; renewal; renewal fee; prior registration and proceedings.**

(1) A registration of a mark under the Trademark Registration Act is effective for ten years after the date of registration and, upon application filed within six months prior to the expiration, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee of one hundred dollars, payable to the secretary, shall accompany the application for renewal of the registration. A registration may be renewed for successive periods of ten years in like manner.

(2) Any registration in force under sections 87-111 to 87-125 on July 13, 2000, as such sections existed prior to such date, is effective and shall continue in full force and effect for the unexpired term of such registration. Such registration may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee within six months prior to the expiration of the registration.

(3) Any suit, proceeding, or appeal pending on July 13, 2000, shall be decided according to sections 87-111 to 87-125 as such sections existed prior to July 13, 2000.

(4) All applications for renewal under the act shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

**Source:** Laws 2000, LB 626, § 8.

**87-134 Registration; assignment; change of name; other recordings.**

(1) Any mark and its registration under the Trademark Registration Act is assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under the Trademark Registration Act is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary within three months after the date of the assignment or prior to such subsequent purchase.

(2) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of

the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments which relate to a mark registered or application pending pursuant to the act, such as licenses, security interests, or mortgages, may be recorded in the discretion of the secretary if the instrument is in writing and duly executed.

(4) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(5) A photocopy of any instrument referred to in this section shall be accepted for recording if it is certified by any of the parties to the instrument, or their successors, to be a true and correct copy of the original.

**Source:** Laws 2000, LB 626, § 9.

#### **87-135 Public records.**

The secretary shall keep for public examination a record of all marks registered or renewed under the Trademark Registration Act, as well as a record of all documents recorded pursuant to section 87-134.

**Source:** Laws 2000, LB 626, § 10.

#### **87-136 Cancellation from register.**

The secretary shall cancel from the register, in whole or in part:

(1) Any registration concerning which the secretary receives a voluntary request for cancellation thereof from the registrant or the assignee of record;

(2) All registrations granted under the Trademark Registration Act and not renewed in accordance with the act;

(3) Any registration concerning which a court of competent jurisdiction finds that:

(a) The registered mark has been abandoned;

(b) The registrant is not the owner of the mark;

(c) The registration was granted improperly;

(d) The registration was obtained fraudulently;

(e) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or

(f) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of filing of the application for registration by the registrant under the act, and not abandoned. If the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration under the act shall not be canceled for such area of the state; or

(4) A court of competent jurisdiction has ordered the cancellation of a registration on any ground.

**Source:** Laws 2000, LB 626, § 11.

**87-137 Classification of goods and services; rules and regulations.**

The secretary shall adopt and promulgate rules and regulations which establish a classification of goods and services for convenience of administration of the Trademark Registration Act, but such rules and regulations shall not limit or extend the applicant's or registrant's rights and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practicable, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

**Source:** Laws 2000, LB 626, § 12.

**87-138 Fraudulent representation; liability.**

Any person who for himself or herself, or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary under the Trademark Registration Act by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is liable for all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party in any court of competent jurisdiction.

**Source:** Laws 2000, LB 626, § 13.

**87-139 Unauthorized use; liability.**

Subject to section 87-143, any person who (1) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under the Trademark Registration Act in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services or (2) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services, is liable in a civil action by the registrant for any and all of the remedies provided in section 87-141, except that under subdivision (2) of this section, the registrant is not entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

**Source:** Laws 2000, LB 626, § 14.

**87-140 Famous mark; factors; remedies.**

(1) The owner of a mark which is famous in this state is entitled, subject to the principles of equity and upon such terms as the court seems reasonable, to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is

provided in this section. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to:

- (a) The degree of inherent or acquired distinctiveness of the mark in this state;
- (b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used;
- (c) The duration and extent of advertising and publicity of the mark in this state;
- (d) The geographical extent of the trading area in which the mark is used;
- (e) The channels of trade for the goods or services with which the mark is used;
- (f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;
- (g) The nature and extent of use of the same or similar mark by third parties; and
- (h) Whether the mark is the subject of a state registration in this state or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the federal principal register.

(2) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state, unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner is also entitled to the remedies under the Trademark Registration Act, subject to the discretion of the court and the principles of equity.

(3) The following are not actionable under this section:

- (a) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;
- (b) Noncommercial use of the mark; or
- (c) All forms of news reporting and news commentary.

**Source:** Laws 2000, LB 626, § 15.

#### **87-141 Injunction; damages; attorney's fees.**

Any owner of a mark registered under the Trademark Registration Act may enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as the court determines to be just and reasonable. A defendant may be required to pay to the owner all profits derived from and all damages suffered by reason of the wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed such profits and damages and reasonable attorney's fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the

case. The enumeration of any right or remedy under the act does not affect a registrant's right to prosecute under any penal law of this state.

**Source:** Laws 2000, LB 626, § 16.

**87-142 Cancellation or registration of mark; action; procedure.**

(1) Actions to require cancellation of a mark registered pursuant to the Trademark Registration Act or in mandamus to compel registration of a mark pursuant to the act shall be brought in the district court of Lancaster County. In an action in mandamus, the proceeding shall be based solely upon the record before the secretary. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under section 25-509.01.

**Source:** Laws 2000, LB 626, § 17.

**87-143 Common law; construction of act.**

Nothing in the Trademark Registration Act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

**Source:** Laws 2000, LB 626, § 18.

**87-144 Fees; not refundable.**

Unless specified by the secretary, the fees payable under the Trademark Registration Act are not refundable.

**Source:** Laws 2000, LB 626, § 19.

**ARTICLE 2**

**TRADE NAMES**

**Cross References**

Registration of name of farm, ranch, or home, see section 23-1313.

Section	
87-201.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-202.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-203.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-204.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-205.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-206.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-207.	Repealed. Laws 1967, c. 628, § 14, p. 2104.
87-208.	Terms, defined.
87-209.	Trade name; not registered; when.
87-210.	Trade name; application for registration; requirements; Secretary of State.
87-211.	Trade name; registration; term effective; renewal; fee; statement.
87-212.	Trade name; assignment; recordation; fee.
87-213.	Secretary of State; record; public examination.
87-214.	Registration; Secretary of State; cancel; when.
87-215.	False representation or declaration; damages.

## Section

- 87-216. Action for misuse; when.  
 87-217. Injury to business; injunction; remedies.  
 87-218. Trade name; enforcement of rights.  
 87-219. Trade name; publication; file; failure; effect.  
 87-219.01. Trade name; protest registration; procedure.  
 87-220. Trade name; failure to register; violation; penalty.

**87-201 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-202 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-203 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-204 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-205 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-206 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-207 Repealed. Laws 1967, c. 628, § 14, p. 2104.**

**87-208 Terms, defined.**

As used in sections 87-208 to 87-220, unless the context otherwise requires:

(1) Applicant means a person filing an application for registration of a trade name under such sections or his or her legal representatives, successors, or assigns;

(2) Person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, unincorporated association, or two or more of the foregoing having a joint or common interest or any other legal or commercial entity;

(3) Registrant means a person to whom registration of a trade name under such sections is issued or his or her legal representatives, successors, or assigns; and

(4) Trade name means every name under which any person does or transacts any business in this state other than the true name of such person.

**Source:** Laws 1967, c. 628, § 1, p. 2099; Laws 1971, LB 486, § 1; Laws 1993, LB 121, § 556; Laws 1997, LB 453, § 6.

Under this and succeeding sections, right to use trade name and to prevent its use by another may be obtained by registration or adoption without recording it, but where parties had adequate remedy at law for damages and failed to show irrepara-

ble injury, neither was entitled in private antitrust action to injunction against use of certain name for buildings handled by them. *Morton Buildings of Nebraska, Inc. v. Morton Buildings, Inc.*, 333 F.Supp. 187 (D. Neb. 1971).

**87-209 Trade name; not registered; when.**

A trade name shall not be registered if it:

- (1) Consists of or comprises immoral, deceptive, or scandalous matter;
- (2) Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with, persons living or dead, institutions, beliefs, or national symbols;
- (3) Consists of, comprises, or simulates the flag or coat of arms or other insignia of the United States, any state or municipality, or any foreign nation;
- (4) Consists of or comprises the name, signature, or portrait of any living individual without his or her consent;

(5)(a) Is merely descriptive or misdescriptive, or is primarily geographically descriptive or geographically misdescriptive as applied to the business of the applicant, or (b) is primarily merely a surname, but nothing in this subdivision shall prevent the registration of a trade name which has become distinctive of the applicant's business in this state. The Secretary of State may accept as evidence that a trade name has become distinctive proof of continuous use by the applicant as a trade name in this state or elsewhere for five years preceding the date of the filing of the application for registration;

(6) Consists of or comprises a trade name which so resembles a trade name registered under sections 87-208 to 87-220, registered in this state, or the name of a business entity on file or registered with the Secretary of State pursuant to Nebraska law as to be likely to cause confusion, mistake, or deception of purchasers, except that a name, although similar, may be used if the business entity affected consents in writing and such writing is filed with the Secretary of State. The word incorporated, inc., or corporation shall not be a part of the trade name being registered unless the firm is duly incorporated in the State of Nebraska or some other state; or

(7) Consists of the word geologist or any modification or derivative of such word, and the applicant does not meet the requirements of subsection (6) of section 81-3528.

**Source:** Laws 1967, c. 628, § 2, p. 2100; Laws 1969, c. 856, § 2, p. 3225; Laws 1971, LB 486, § 2; Laws 1997, LB 44, § 12; Laws 1997, LB 453, § 7; Laws 1998, LB 1161, § 91.

**87-210 Trade name; application for registration; requirements; Secretary of State.**

(1) Subject to the limitations set forth in sections 87-208 to 87-220, any person who adopts a trade name for use in this state may file in the office of the Secretary of State on a form furnished by the Secretary of State an application, in duplicate, for registration of the trade name setting forth, but not limited to, the following information:

(a) The name and street address of the applicant for registration; and, if a corporation, the state of incorporation;

(b) The trade name sought to be registered;

(c) The general nature of the business in fact conducted by the applicant;

(d) The length of time during which the trade name has been used in this state;

(e) The signature of the applicant; and

(f) A filing fee of one hundred dollars.

(2) Upon compliance by the applicant with the requirements of sections 87-208 to 87-220, the Secretary of State shall return the duplicate copy stamped with the date of filing to the applicant or the representative submitting the applications for filing.

**Source:** Laws 1967, c. 628, § 3, p. 2100; Laws 1971, LB 486, § 3; Laws 1975, LB 95, § 9; Laws 1982, LB 928, § 78; Laws 1997, LB 453, § 8; Laws 2005, LB 450, § 1.

**87-211 Trade name; registration; term effective; renewal; fee; statement.**

Registration of a trade name under sections 87-208 to 87-220 shall be effective for a term of ten years from the date of registration and, upon application filed in duplicate within six months prior to the expiration of such term on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of one hundred dollars payable to the Secretary of State shall accompany the application for renewal of the registration.

A trade name registration may be renewed for successive periods of ten years in like manner.

The Secretary of State shall notify registrants of trade names under sections 87-208 to 87-220 of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration or of last renewal by writing to the last-known street address of the registrants.

Any registration in force on August 27, 1971, shall expire ten years from the date of the registration or of the last renewal thereof, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him or her and paying the renewal fee as provided in this section within six months prior to the expiration of the registration.

All applications for renewals under sections 87-208 to 87-220 whether of registrations made under sections 87-208 to 87-220 or of registrations effected under any prior act shall include a statement that the trade name is still in use in this state.

**Source:** Laws 1967, c. 628, § 4, p. 2101; Laws 1971, LB 486, § 4; Laws 1975, LB 95, § 10; Laws 1984, LB 1016, § 1; Laws 1997, LB 453, § 9.

**87-212 Trade name; assignment; recordation; fee.**

Any trade name registered under sections 87-208 to 87-220 shall be assignable with the goodwill of the business in which the trade name is used. Assignment shall be by an instrument in writing duly executed, in duplicate, and may be recorded with the Secretary of State upon the payment of a fee of five dollars. The street address, city, and state of the assignee must be included in the assignment. Upon recording of the assignment, the Secretary of State shall return the duplicate copy stamped with the date of filing to the applicant or the representative submitting the applications for filing. An assignment of any registration under sections 87-208 to 87-220 shall be void as against any subsequent purchaser for value without notice unless the assignment is recorded with the Secretary of State prior to the subsequent purchase.

**Source:** Laws 1967, c. 628, § 5, p. 2101; Laws 1969, c. 856, § 3, p. 3226; Laws 1997, LB 453, § 10.

**87-213 Secretary of State; record; public examination.**

The Secretary of State shall keep for public examination a record of all trade names registered or renewed under sections 87-208 to 87-220.

**Source:** Laws 1967, c. 628, § 6, p. 2102; Laws 1997, LB 453, § 11.

**87-214 Registration; Secretary of State; cancel; when.**

The Secretary of State shall cancel from the register:

- (1) Any registration concerning which the Secretary of State shall receive a voluntary request for cancellation from the registrant or the assignee of record;
- (2) Any registration granted under sections 87-208 to 87-220 and not renewed in accordance with such sections;
- (3) Any registration concerning which a court of competent jurisdiction shall find:
  - (a) That the registered trade name has been abandoned;
  - (b) That the registrant is not the owner of the trade name;
  - (c) That the registration was granted improperly; or
  - (d) That the registration was obtained fraudulently;
- (4) Any registration that a court of competent jurisdiction shall order canceled on any ground; and
- (5) Any registration where the registrant has failed to publish such trade name within thirty days from the filing in the office of the Secretary of State and filing proof of publication with the Secretary of State and county clerk within the thirty days.

**Source:** Laws 1967, c. 628, § 7, p. 2102; Laws 1997, LB 453, § 12.

Where one has acquired a common-law right in a trade name by its use, the subsequent registration of the trade name by the Secretary of State upon the application of another is invalid and subject to cancellation. *White v. Board of Regents of Univ. of Neb. at Lincoln*, 260 Neb. 26, 614 N.W.2d 330 (2000).

#### **87-215 False representation or declaration; damages.**

Any person who, for himself or herself or on behalf of any other person, procures the registration of any trade name in the office of the Secretary of State under the provisions of sections 87-208 to 87-220, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of this filing or registration, to be recovered by any party injured in any court of competent jurisdiction.

**Source:** Laws 1967, c. 628, § 8, p. 2102; Laws 1997, LB 453, § 13.

#### **87-216 Action for misuse; when.**

Subject to the provisions of section 87-218, any person shall be liable to a civil action by the registrant of the trade name for any or all of the remedies provided in section 87-217 if that person shall:

- (1) Use in connection with his or her business, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trade name registered under sections 87-208 to 87-220 in a manner likely to cause confusion, mistake, or deception of purchasers; or
- (2) Reproduce, counterfeit, copy, or colorably imitate any registered trade name and apply the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be in conjunction with another business in this state; except that the registrant shall not be entitled to recover profits or damages unless the acts were committed with knowledge that the imitation was intended to be used to cause confusion, mistake, or deception of purchasers.

**Source:** Laws 1967, c. 628, § 9, p. 2103; Laws 1997, LB 453, § 14.

**87-217 Injury to business; injunction; remedies.**

Any registrant of a trade name may proceed by suit to enjoin the use, display, or sale of any counterfeits or imitations thereof, and a court of competent jurisdiction may restrain this use, display, or sale on terms which the court deems just and reasonable and may require the defendants to pay to the registrant either all profits attributable to the wrongful use, display, or sale, or all damages caused by the wrongful use, display, or sale, or both such profits and damages and reasonable attorney's fees. The court may order that any counterfeits or imitations in the possession or under the control of any defendant be delivered to an officer of the court, or to the complainant, to be destroyed.

**Source:** Laws 1967, c. 628, § 10, p. 2103; Laws 1997, LB 453, § 15.

**87-218 Trade name; enforcement of rights.**

Sections 87-208 to 87-220 shall not adversely affect rights in trade names, or the enforcement of rights in trade names, acquired at any time in good faith at common law.

**Source:** Laws 1967, c. 628, § 11, p. 2104; Laws 1997, LB 453, § 16.

**87-219 Trade name; publication; file; failure; effect.**

Every duplicate of the registration of a trade name shall be published by the applicant once in a newspaper of general circulation published in the city or village where the business is to be located, or, if there is no newspaper in the city or village, in some newspaper of general circulation in the county. Proof of such publication shall be filed in the office of the Secretary of State and with the county clerk of the county wherein the principal office is located, within thirty days from the date of registration in the office of the Secretary of State. If proof of publication is not filed with the Secretary of State and county clerk within the thirty days, the registration shall be canceled by the Secretary of State.

**Source:** Laws 1967, c. 628, § 13, p. 2104.

**87-219.01 Trade name; protest registration; procedure.**

(1) Within sixty days after the publication of a new registered trade name as provided in section 87-219, a person holding a valid registration of a trade name, corporate name, or limited liability company name may protest the registration of the new trade name. The protest shall be submitted in writing to the Secretary of State. The Secretary of State shall forward a copy of the written complaint to the new registrant who shall have thirty days to respond to the complaint in writing. If, upon review of the complaint and the response to the complaint, the Secretary of State finds that the new registered trade name violates any provision of section 87-209, the Secretary of State shall cancel such trade name. Unless the dispute over the registration of the new trade name is otherwise resolved or settled by the parties, the Secretary of State shall make his or her finding within fifteen days after the response by the new registrant.

(2) The Secretary of State's decision may be appealed to the district court of Lancaster County within thirty days after notice of the decision is received by the appealing party. The appeal shall be commenced by petitioning the district court to compel the Secretary of State to cancel or reinstate such trade name,

and attached to the petition shall be copies of the original filing for the trade name, proof of publication, the complaint, the response to the complaint, if any, and the Secretary of State's finding. The district court may summarily order the Secretary of State to cancel or reinstate such trade name or take any other action the district court considers appropriate. The district court's final decision may be appealed as in other civil proceedings.

**Source:** Laws 1997, LB 453, § 17.

**87-220 Trade name; failure to register; violation; penalty.**

Any person, not excepted by section 87-210, who shall engage in or transact any business in this state under a trade name, as defined in sections 87-208 to 87-220, without registering such trade name shall be deemed guilty of a Class V misdemeanor. Each day any violation shall continue shall be deemed a separate and distinct offense.

**Source:** Laws 1969, c. 856, § 4, p. 3227; Laws 1977, LB 39, § 331; Laws 1997, LB 453, § 18.

**ARTICLE 3**

**DECEPTIVE TRADE PRACTICES**

**Cross References**

- Charitable Gift Annuity Act, see section 59-1801.
- Telemarketing and Prize Promotions Act, see section 86-212.
- Telephone Consumer Slamming Prevention Act, see section 86-201.
- Unfair Insurance Trade Practices Act, see section 44-1521.

(a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

- Section
- 87-301. Terms, defined.
- 87-302. Deceptive trade practices; enumerated.
- 87-303. Deceptive trade practices; damages; injunction; costs; additional remedy.
- 87-303.01. Unconscionable act or practice; violation; determination.
- 87-303.02. Deceptive trade practice or unconscionable act; Attorney General; powers.
- 87-303.03. Attorney General; additional powers.
- 87-303.04. Attorney General; order; failure or refusal to obey; court; powers.
- 87-303.05. Attorney General; temporary restraining order; civil action; written assurance of voluntary compliance; deceptive practice; burden of proof.
- 87-303.06. Claims not barred.
- 87-303.07. Sale or lease agreement; unenforceable; when.
- 87-303.08. Violations; penalty.
- 87-303.09. Injunction, declaratory judgment, written assurance; violation; penalty.
- 87-303.10. Civil action; statute of limitations.
- 87-303.11. Violations; civil penalty; recovery; procedure.
- 87-304. Applicability of act.
- 87-305. Act, how construed.
- 87-306. Act, how cited.

(b) AUTOMATIC DIALING-ANNOUNCING DEVICE

- 87-307. Repealed. Laws 1993, LB 305, § 37.
- 87-308. Repealed. Laws 1993, LB 305, § 37.
- 87-309. Repealed. Laws 1993, LB 305, § 37.
- 87-309.01. Repealed. Laws 1993, LB 305, § 37.
- 87-310. Repealed. Laws 1993, LB 305, § 37.
- 87-311. Repealed. Laws 1993, LB 305, § 37.
- 87-312. Repealed. Laws 1993, LB 305, § 37.

## (a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

**87-301 Terms, defined.**

For purposes of the Uniform Deceptive Trade Practices Act, unless the context otherwise requires:

(1) Article shall mean a product as distinguished from its trademark, label, or distinctive dress in packaging;

(2) Certification mark shall mean a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;

(3) Collective mark shall mean a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization;

(4) Mark shall mean a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;

(5) Person shall mean an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(6) Service mark shall mean a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(7) Trademark shall mean any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others;

(8) Trade name shall mean a word or a name, or any combination of the foregoing in any form or arrangement used by a person to identify his or her business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others;

(9) Chain distributor scheme also known as pyramid sales shall mean a sales device whereby a person, upon a condition that he or she make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or the receipt of profits therefrom, shall not change the identity of the scheme as a chain distributor scheme;

(10) Investment shall be any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and shall include, without limitation, franchises, business opportunities, and services. It shall not include real estate, securities registered under the Securities Act of Nebraska, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(11) Referral or chain referral sales or leases shall mean any sales technique, plan, arrangement, or agreement whereby the seller or lessor gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer or lessee giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding the seller or lessor in making a sale or lease to another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease; and

(12) Attorney General shall mean the Attorney General of the State of Nebraska or the county attorney of any county with the consent and advice of the Attorney General.

**Source:** Laws 1969, c. 855, § 1, p. 3221; Laws 1974, LB 327, § 1; Laws 1993, LB 121, § 557; Laws 2002, LB 857, § 6.

#### Cross References

**Securities Act of Nebraska**, see section 8-1123.

Attorney General and associates immune from suit for libel after initiating deceptive practices suit against plaintiffs. *Ledwith v. Douglas*, 568 F.2d 117 (8th Cir. 1978).

Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corpo-

rate name violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

### **87-302 Deceptive trade practices; enumerated.**

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;
- (7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparages the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertises goods or services with intent not to sell them as advertised;
- (10) Advertises goods or services with intent not to supply reasonable expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Uses or promotes the use of a chain distributor scheme in connection with the solicitation of business or personal investments from members of the public;

(13) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;

(14) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;

(15) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

(ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;

(16) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;

(17) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order; or

(18) Violates any provision of the Nebraska Foreclosure Protection Act.

(b) In order to prevail in an action under the Uniform Deceptive Trade Practices Act, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

**Source:** Laws 1969, c. 855, § 2, p. 3222; Laws 1974, LB 327, § 2; Laws 1976, LB 820, § 1; Laws 1979, LB 257, § 1; Laws 1988, LB 180, § 1; Laws 1991, LB 408, § 1; Laws 1993, LB 305, § 32; Laws 2003, LB 118, § 1; Laws 2008, LB123, § 29; Laws 2008, LB781, § 1.

Effective date July 18, 2008.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 123, section 29, with LB 781, section 1, to reflect all amendments.

#### Cross References

**Nebraska Foreclosure Protection Act**, see section 76-2701.

Pursuant to subsection (a)(12) of this section, criminal prosecutions for chain distribution schemes are not limited to prosecution under the Uniform Deceptive Trade Practices Act. *State v. Irons*, 254 Neb. 18, 574 N.W.2d 144 (1998).

Although use of word 'similar' is not deceptive, as a whole a comparative advertisement which misrepresents that the consumer would have to wait for competitor's product, which makes unauthorized use of competitor's sample book, and which makes unsubstantiated comparison as to savings violates this act. *Kirsch Fabric Corp. v. Brookstein Enterprises, Inc.*, 209 Neb. 666, 309 N.W.2d 328 (1981).

Nebraska Deceptive Trade Practices Act prohibits a broad panoply of deceptive trade practices, including passing of goods and services of another as one's own, confusing consumers as to the origin of the goods. *Midway Mfg. Co. v. Dirkschneider*, 571 F.Supp. 282 (D. Neb. 1983).

Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corporate name, violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

**87-303 Deceptive trade practices; damages; injunction; costs; additional remedy.**

(a) A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on

terms that the court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

(b) Costs shall be allowed to the prevailing party unless the court otherwise directs. The court in its discretion may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action which he knew to be groundless or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

**Source:** Laws 1969, c. 855, § 3, p. 3223.

Portion of order enjoining violator from ever disseminating advertising using competitor's name is deprivation of due process. *Kirsch Fabric Corp. v. Brookstein Enterprises, Inc.*, 209 Neb. 666, 309 N.W.2d 328 (1981).

Company found to have committed unfair competition in use of trademark was not liable for attorney's fees in infringement

action where activities were not willfully improper with knowledge they were deceptive but acted in colorable theory it had right to use trademark. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

**87-303.01 Unconscionable act or practice; violation; determination.**

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction shall be a violation of the Uniform Deceptive Trade Practices Act.

(2) The unconscionability of an act or practice shall be a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

**Source:** Laws 1974, LB 327, § 3; Laws 2008, LB781, § 2.  
Effective date July 18, 2008.

**87-303.02 Deceptive trade practice or unconscionable act; Attorney General; powers.**

When the Attorney General has cause to believe that any person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may:

(a) Require such person to file a statement or report in writing under oath or otherwise, on such forms as shall be prescribed by the Attorney General, as to all facts and circumstances concerning the sale, offer, or advertisement of property by such person, and such other data and information as the Attorney General deems necessary;

(b) Examine under oath any person in connection with the sale or advertisement of any property;

(c) Examine any property or sample thereof, record, book, document, account, or paper as the Attorney General deems necessary; and

(d) Pursuant to an order of any district court, impound any record, book, document, account, paper, or sample of property which is material to such

practice and retain the same in his or her possession until the completion of all proceedings undertaken under the Uniform Deceptive Trade Practices Act.

**Source:** Laws 1974, LB 327, § 4; Laws 2008, LB781, § 3.  
Effective date July 18, 2008.

**87-303.03 Attorney General; additional powers.**

(1) The Attorney General, in addition to other powers conferred upon him or her by the Uniform Deceptive Trade Practices Act, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and adopt and promulgate such rules as may be necessary to administer the Uniform Deceptive Trade Practices Act.

(2) Service of any notice or subpoena may be made in the manner prescribed by the rules of civil procedure.

**Source:** Laws 1974, LB 327, § 5; Laws 2008, LB781, § 4.  
Effective date July 18, 2008.

**87-303.04 Attorney General; order; failure or refusal to obey; court; powers.**

(1) If any person fails or refuses to obey any order of the Attorney General to file any statement or report, or to obey any subpoena issued by the Attorney General, pursuant to the Uniform Deceptive Trade Practices Act, the Attorney General may apply to any district court in this state for relief until such person obeys such order or subpoena or files such statement or report.

(2) The court, in its order, may:

(a) Grant injunctive relief restraining the sale or advertisement of any property by such person;

(b) Require the attendance of or the production of documents by such person, or both;

(c) Suspend or revoke any license, permit, or certificate issued pursuant to law to any such person, which may be used to further the alleged unlawful practice; or

(d) Grant such other or further relief as may be necessary to obtain compliance by such person.

**Source:** Laws 1974, LB 327, § 6; Laws 2008, LB781, § 5.  
Effective date July 18, 2008.

**87-303.05 Attorney General; temporary restraining order; civil action; written assurance of voluntary compliance; deceptive practice; burden of proof.**

(1) Whenever the Attorney General has cause to believe that a person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may apply for and obtain, in an action in any district court of this state, a temporary restraining order, or injunction, or both, pursuant to the rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice, or which may be necessary to restore to any

other person any money or real or personal property which may have been acquired by means of any such practice.

(2) When the Attorney General has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, the Attorney General may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation by the Attorney General and of any amount or amounts necessary to restore to any person any money or real or personal property which may have been acquired by such alleged violator by means of any such practice. Proof by a preponderance of evidence of a violation of such assurance shall constitute prima facie evidence of a deceptive practice as listed in section 87-302 or 87-303.01 in any civil action or proceeding thereafter commenced by the Attorney General.

**Source:** Laws 1974, LB 327, § 7; Laws 2008, LB781, § 6.  
Effective date July 18, 2008.

Proceedings brought by the Attorney General under 87-303.05(1) are civil in nature. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979).

The requirement in this section that the Attorney General must have cause to believe deceptive trade practices exist or

have existed before he institutes an action is not an essential element of the action which must be proved at trial. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979).

#### **87-303.06 Claims not barred.**

The Uniform Deceptive Trade Practices Act shall not bar any claim against any person who has acquired any money or real or personal property by means of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01.

**Source:** Laws 1974, LB 327, § 8; Laws 2008, LB781, § 7.  
Effective date July 18, 2008.

#### **87-303.07 Sale or lease agreement; unenforceable; when.**

If a buyer or lessee is induced by a violation of section 87-302 or 87-303.01 to enter into a sale or lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his or her option, may rescind the agreement or retain the merchandise delivered and the benefit of any services performed without any obligation to pay for them.

**Source:** Laws 1974, LB 327, § 9; Laws 2008, LB781, § 8.  
Effective date July 18, 2008.

#### **87-303.08 Violations; penalty.**

Any person who violates the Uniform Deceptive Trade Practices Act shall be guilty of a Class II misdemeanor except as otherwise provided in the act.

**Source:** Laws 1974, LB 327, § 10; Laws 1979, LB 257, § 7; Laws 1988, LB 180, § 2; Laws 1990, LB 656, § 22; Laws 1993, LB 305, § 33.

#### **87-303.09 Injunction, declaratory judgment, written assurance; violation; penalty.**

Any person who willfully violates the terms of an injunction or declaratory judgment of the court or the terms of a written assurance of voluntary

compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be guilty of a Class IV felony.

**Source:** Laws 1974, LB 327, § 11; Laws 1990, LB 656, § 23.

**87-303.10 Civil action; statute of limitations.**

A civil action arising under the Uniform Deceptive Trade Practices Act may be brought only within four years from the date of the purchase of goods or services.

**Source:** Laws 1976, LB 820, § 2; Laws 1990, LB 656, § 24.

**87-303.11 Violations; civil penalty; recovery; procedure.**

Any person who violates section 87-302 or 87-303.01 or who willfully violates the terms of an injunction or declaratory judgment of a district court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action. For purposes of this section, the district court which issues any injunction shall retain jurisdiction and the cause shall be continued while the Attorney General seeks the recovery of such civil penalties.

**Source:** Laws 1990, LB 656, § 25; Laws 1993, LB 305, § 34.

**87-304 Applicability of act.**

(a) The Uniform Deceptive Trade Practices Act does not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(2) Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) Actions or appeals pending (a) on December 25, 1969, under the Uniform Deceptive Trade Practices Act as such act existed immediately prior to March 25, 1974, or (b) under such act as amended and sections 87-303.01 to 87-303.09 on March 25, 1974.

(b) Subdivisions (a)(2) and (a)(3) of section 87-302 do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before December 25, 1969, if the use was in good faith and is otherwise lawful except for the Uniform Deceptive Trade Practices Act.

(c) The Uniform Deceptive Trade Practices Act shall apply to deceptive trade practices conducted in whole or in part within the State of Nebraska against residents or nonresidents of this state. The act shall also apply to deceptive trade practices conducted outside of Nebraska against residents of this state if there is a direct connection to any deceptive trade practices conducted in whole or in part within this state.

**Source:** Laws 1969, c. 855, § 4, p. 3224; Laws 1974, LB 327, § 12; Laws 2008, LB781, § 9.  
Effective date July 18, 2008.

**87-305 Act, how construed.**

The Uniform Deceptive Trade Practices Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

**Source:** Laws 1969, c. 855, § 5, p. 3224; Laws 1974, LB 327, § 13; Laws 2008, LB781, § 10.  
Effective date July 18, 2008.

**87-306 Act, how cited.**

Sections 87-301 to 87-306 shall be known and may be cited as the Uniform Deceptive Trade Practices Act.

**Source:** Laws 1969, c. 855, § 6, p. 3224; Laws 1974, LB 327, § 14; Laws 1990, LB 656, § 26.

## (b) AUTOMATIC DIALING-ANNOUNCING DEVICE

**87-307 Repealed. Laws 1993, LB 305, § 37.**

**87-308 Repealed. Laws 1993, LB 305, § 37.**

**87-309 Repealed. Laws 1993, LB 305, § 37.**

**87-309.01 Repealed. Laws 1993, LB 305, § 37.**

**87-310 Repealed. Laws 1993, LB 305, § 37.**

**87-311 Repealed. Laws 1993, LB 305, § 37.**

**87-312 Repealed. Laws 1993, LB 305, § 37.**

## ARTICLE 4

## FRANCHISE PRACTICES

## Cross References

**Beer distribution agreements**, see sections 53-201 to 53-223.

**Equipment Business Regulation Act**, see section 87-701.

**Franchise tax**, see sections 77-3801 to 77-3807.

**Motor vehicle franchises**, see sections 60-1420 to 60-1440.

## (a) FRANCHISE PRACTICES ACT

## Section

- 87-401. Legislative intent.
- 87-402. Terms, defined.
- 87-403. Franchise; sections, applicable; when.
- 87-404. Franchise; termination, cancellation, or failure to renew; notice; when; good cause.
- 87-405. Franchisee; transfer, assign, or sell franchise or interest therein; notice; contents; franchisor; approval required.
- 87-406. Prohibited practices; enumerated.
- 87-407. Sections; applicability.
- 87-408. Action by franchisee; defense.
- 87-409. Franchisee; action to recover damages; injunction; costs.
- 87-410. Act, how cited.

## (b) FUEL FRANCHISES

- 87-411. Motor fuel franchises; death of franchisee; effect.
- 87-412. Designation of successor in interest; rights; notice of election to operate franchise.

## Section

87-413. Successor in interest; trial lease and franchise agreement; procedure.

87-414. Applicability of sections.

## (a) FRANCHISE PRACTICES ACT

**87-401 Legislative intent.**

The Legislature finds and declares that distribution and sales through franchise arrangements in the state vitally affect the general economy of the state, the public interest and public welfare. It is therefor necessary in the public interest to define the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.

**Source:** Laws 1978, LB 202, § 1.

Prior to the enactment of this and the following sections constituting the Nebraska Franchise Practices Act, the law of Nebraska generally was that any person might do or refuse to do business with whomsoever he desired; in no event was there a public policy then existing of requiring franchisees to be

terminated only upon the existence of good cause shown. *McArthur v. Mobil Oil Corp.*, 212 Neb. 592, 324 N.W.2d 399 (1982).

The Nebraska Franchise Practices Act will not be applied retrospectively. *McDonald's Corp. v. Markim, Inc.*, 209 Neb. 49, 306 N.W.2d 158 (1981).

**87-402 Terms, defined.**

For purposes of the Franchise Practices Act, unless the context otherwise requires:

(1) Franchise shall mean (a) a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee a license to use a trade name, trademark, service mark, or related characteristics and in which there is a community of interest in the marketing of goods or services at wholesale or retail or by lease, agreement, or otherwise and (b) any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of nonalcoholic beverages at wholesale, retail, or otherwise. Franchise shall not include any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of petroleum products at wholesale, retail, or otherwise;

(2) Person shall mean every natural person, firm, partnership, limited liability company, association, or corporation;

(3) Franchisor shall mean a person who grants a franchise to another person;

(4) Franchisee shall mean a person to whom a franchise is offered or granted;

(5) Franchise fee shall include any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for a surety bond, for a surety deposit, or for security for payment of debts due;

(6) Sale, transfer, or assignment shall mean any disposition of a franchise or any interest therein, with or without consideration, which shall include, but not be limited to, bequest, inheritance, gift, exchange, lease, or license;

(7) Place of business shall mean a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a residence, or a vehicle; and

(8) Good cause for terminating, canceling, or failure to renew a franchise shall be limited to failure by the franchisee to substantially comply with the requirements imposed upon him or her by the franchise.

**Source:** Laws 1978, LB 202, § 2; Laws 1989, LB 371, § 24; Laws 1993, LB 121, § 559.

Franchise agreements are not required to be written. *Regnev, Inc. v. Shasta Beverages*, 215 Neb. 230, 337 N.W.2d 783 (1983).

**87-403 Franchise; sections, applicable; when.**

Sections 87-401 to 87-410 apply only to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of Nebraska, (2) when gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded thirty-five thousand dollars for the twelve months next preceding the institution of suit pursuant to sections 87-401 to 87-410, and (3) when more than twenty percent of the franchisee's gross sales are intended to be or are derived from such franchise.

**Source:** Laws 1978, LB 202, § 3.

**87-404 Franchise; termination, cancellation, or failure to renew; notice; when; good cause.**

It shall be a violation of sections 87-401 to 87-410 for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (1) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (2) when the alleged grounds are (a) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (b) insolvency, the institution of bankruptcy or receivership proceedings, (c) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (d) falsification of records or reports required by the franchisor, (e) the existence of an imminent danger to public health or safety, or (f) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of sections 87-401 to 87-410 for a franchisor to terminate, cancel or fail to renew a franchise without good cause. This section shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.

**Source:** Laws 1978, LB 202, § 4.

**87-405 Franchisee; transfer, assign, or sell franchise or interest therein; notice; contents; franchisor; approval required.**

It shall be a violation of sections 87-401 to 87-410 for any franchisee to transfer, assign or sell a franchise or interest therein to another person unless the franchisee shall first notify the franchisor of such intention by written notice by certified mail setting forth in the notice of intent the prospective transferee's name, address, statement of financial qualification and business experience during the previous five years. The franchisor shall within sixty days after receipt of such notice either approve in writing to the franchisee such sale to

the proposed transferee, or by written notice advise the franchisee of the unacceptability of the proposed transferee setting forth material reasons relating to the character, financial ability or business experience of the proposed transferee. If the franchisor does not reply within the specified sixty days, his approval is deemed granted. No such transfer, assignment or sale shall be valid unless the transferee agrees in writing to comply with all the requirements of the franchise then in effect.

**Source:** Laws 1978, LB 202, § 5.

**87-406 Prohibited practices; enumerated.**

It shall be a violation of sections 87-401 to 87-410 for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

(1) To require a franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by sections 87-401 to 87-410;

(2) To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;

(3) To require or prohibit any change in management of any franchisee unless such requirement or prohibition of change shall be for good cause, which cause shall be stated in writing by the franchisor;

(4) To restrict the sale of any equity or debenture issue or the transfer of any securities of any franchisee or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to employees, personnel of the franchisee, or heirs of the principal owner, as long as basic financial requirements of the franchisor are complied with and any such sale, transfer, or issuance does not have the effect of accomplishing a sale of the franchise;

(5) To impose unreasonable standards of performance upon a franchisee; and

(6) To provide any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly violates sections 87-401 to 87-410.

**Source:** Laws 1978, LB 202, § 6.

**87-407 Sections; applicability.**

Sections 87-401 to 87-410 shall not apply to franchises which are subject to any other statute of this state.

**Source:** Laws 1978, LB 202, § 7.

**87-408 Action by franchisee; defense.**

It shall be a defense for a franchisor, to any action brought under sections 87-401 to 87-410 by a franchisee, if it be shown that such franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

**Source:** Laws 1978, LB 202, § 8.

**87-409 Franchisee; action to recover damages; injunction; costs.**

Any franchisee may bring an action against its franchisor for violation of sections 87-401 to 87-410 to recover damages sustained by reason of any violation of sections 87-401 to 87-410 and, when appropriate, shall be entitled to injunctive relief. The prevailing party in any action brought pursuant to this section shall be entitled to the costs of the action including but not limited to reasonable attorney's fees.

**Source:** Laws 1978, LB 202, § 9.

**87-410 Act, how cited.**

Sections 87-401 to 87-410 shall be known and may be cited as the Franchise Practices Act.

**Source:** Laws 1978, LB 202, § 10.

(b) FUEL FRANCHISES

**87-411 Motor fuel franchises; death of franchisee; effect.**

(1) Any franchise agreement relating to the distribution or retail sale of motor fuels and any agreement for the lease of real or personal property which is part of any such franchise agreement shall terminate upon the death of the franchisee. However, a one-year trial lease and franchise agreement shall be granted by such franchisor to the franchisee's designated and qualified successor in interest if:

(a) The franchisee has provided the franchisor with written notice of the designation of a qualified successor in interest at least six months prior to the death of the franchisee. Such notice shall be on a form prescribed by the franchisor and made available to the franchisee at the franchisee's request; and

(b) The franchisee has been a franchisee of the same franchisor with whom he or she has a valid franchise agreement at the time of his or her death for a period of at least five consecutive years prior to his or her death.

(2) For purposes of sections 87-411 to 87-414, successor in interest shall be restricted to a surviving spouse, adult child, brother, sister, or parent of the franchisee who, at the time of the franchisee's death, meets reasonable qualifications then being required of franchisees by the franchisor.

(3) Unless otherwise specifically provided in this section, actions to be performed by the franchisor or by the successor in interest under sections 87-411 to 87-414 shall be performed within a reasonable time.

**Source:** Laws 1985, LB 700, § 1; Laws 1994, LB 1160, § 123; Laws 1995, LB 182, § 67.

**87-412 Designation of successor in interest; rights; notice of election to operate franchise.**

A franchisee may designate one primary and one alternate successor in interest. The alternate, if one is designated, shall have no rights under sections 87-411 to 87-414 if the primary successor in interest exercises his or her rights under sections 87-411 to 87-414. If an alternate desires to assume and operate the franchise in the event the primary successor in interest fails to do so, the alternate shall give notice of such election within forty-five days after the death of the franchisee and shall comply with sections 87-411 to 87-414.

**Source:** Laws 1985, LB 700, § 2.

**87-413 Successor in interest; trial lease and franchise agreement; procedure.**

(1) Upon meeting the reasonable qualifications referred to in section 87-411, the successor in interest shall be entitled to enter into a one-year trial lease and franchise agreement with the franchisor as provided by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(2) The primary successor in interest shall have twenty-one days after the death of the franchisee to give written notice of an election to enter into the trial lease and franchise. The notification shall contain such information regarding business experience and credit worthiness as is reasonably required by the franchisor.

(3) If the successor in interest assumes the franchise, the successor in interest shall account to the heirs or estate of the deceased franchisee for the value of personal property of the franchisee located at or related to the franchise.

**Source:** Laws 1985, LB 700, § 3.

**87-414 Applicability of sections.**

Sections 87-411 to 87-414 shall apply to franchise agreements existing on and those executed or renewed on or after September 6, 1985.

**Source:** Laws 1985, LB 700, § 4.

**ARTICLE 5****TRADE SECRETS ACT****Cross References**

**Records withheld from the public,** see section 84-712.05.

**Rules of evidence,** see section 27-508.

**Section**

- 87-501. Act, how cited.
- 87-502. Terms, defined.
- 87-503. Misappropriation; injunction; royalty; affirmative acts.
- 87-504. Misappropriation; damages.
- 87-505. Court proceedings; preserve secrecy.
- 87-506. Statute of limitation.
- 87-507. Applicability of act.

**87-501 Act, how cited.**

Sections 87-501 to 87-507 shall be known and may be cited as the Trade Secrets Act.

**Source:** Laws 1988, LB 337A, § 1.

**87-502 Terms, defined.**

As used in the Trade Secrets Act, unless the context otherwise requires:

(1) Improper means shall mean theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) Misappropriation shall mean:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

- (i) Used improper means to acquire knowledge of the trade secret;
- (ii) At the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:
  - (A) Derived from or through a person who had utilized improper means to acquire it;
  - (B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
  - (C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
- (iii) Before a material change of his or her position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake;

(3) Person shall mean a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity; and

(4) Trade secret shall mean information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that:

- (a) Derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Source:** Laws 1988, LB 337A, § 2; Laws 1993, LB 121, § 560.

Under this section, a recipe can be considered a trade secret. *Magistro v. J. Lou, Inc.*, 270 Neb. 438, 703 N.W.2d 887 (2005).

A customer list can be included in the definition of a trade secret under this section. *Home Pride Foods v. Johnson*, 262 Neb. 701, 634 N.W.2d 774 (2001).

### **87-503 Misappropriation; injunction; royalty; affirmative acts.**

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances shall include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

**Source:** Laws 1988, LB 337A, § 3.

### **87-504 Misappropriation; damages.**

Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or having reason to know of the misappropriation renders a monetary recovery inequitable, a complainant shall be entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

**Source:** Laws 1988, LB 337A, § 4.

#### **87-505 Court proceedings; preserve secrecy.**

In an action under the Trade Secrets Act, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, but not be limited to, granting protective orders in connection with discovery proceedings and ordering nondisclosure of the alleged trade secret by the parties' attorneys, witnesses, or experts. The disclosure or publication of a trade secret in a court proceeding or as a result thereof shall not constitute an abandonment of the secret.

**Source:** Laws 1988, LB 337A, § 5.

#### **87-506 Statute of limitation.**

An action for misappropriation shall be brought within four years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this section, a continuing misappropriation shall constitute a single claim.

**Source:** Laws 1988, LB 337A, § 6.

#### **87-507 Applicability of act.**

The Trade Secrets Act shall not apply to any misappropriation occurring prior to July 9, 1988. With respect to a continuing misappropriation that began prior to July 9, 1988, such act also shall not apply to the continuing misappropriation that occurs after such date.

**Source:** Laws 1988, LB 337A, § 7.

## **ARTICLE 6**

### **INVENTION DEVELOPMENT**

#### **Cross References**

Negotiable instruments relating to patent rights, see section 62-302.

#### **Section**

- 87-601. Act, how cited.
- 87-602. Terms, defined.
- 87-603. Contract for invention development services; requirements; option to terminate.
- 87-604. Contract for invention development services; cover sheet; contents; invention developer; duties.
- 87-605. Contract for invention development services; written report; contents.
- 87-606. Contract for invention development services; contents.
- 87-607. Contract for invention development services; voidable; when; civil action authorized; additional amount distributed to common schools; when; rebuttable presumption.

## Section

87-608. Attorney General; enforcement duties; civil penalty.

87-609. Invention developer; bond; filings required; fees.

87-610. Remedies; not exclusive.

**87-601 Act, how cited.**

Sections 87-601 to 87-610 shall be known and may be cited as the Invention Development Services Disclosure Act.

**Source:** Laws 1991, LB 96, § 1.

**87-602 Terms, defined.**

For purposes of the Invention Development Services Disclosure Act:

(1) Contract for invention development services shall mean a contract by which an invention developer undertakes invention development services for a customer;

(2) Customer shall mean any person, firm, partnership, limited liability company, corporation, or other entity that enters into a contract for invention development services, except any firm, limited liability company, corporation, or other entity, other than a natural person, purchasing invention development services as an adjunct to the traditional commercial enterprises in which it engages as a livelihood;

(3) Invention shall mean a discovery, process, machine, design, formulation, product, concept, or idea, or any combination thereof, whether patentable or not;

(4) Invention developer shall mean any person, firm, partnership, limited liability company, or corporation and any agent, employee, officer, partner, member, or independent contractor thereof who offers to perform or performs for a customer any invention development services. Invention developer shall not include:

(a) Any department or agency of the federal, state, or local government;

(b) Any nonprofit, charitable, scientific, or educational organization described in section 170(b)(1)(A) of the Internal Revenue Code;

(c) Any attorney acting within the scope of the attorney's professional license;

(d) Any person duly registered before the United States Patent and Trademark Office acting within the scope of that person's professional license; or

(e) Any person, firm, limited liability company, corporation, association, or other entity that does not charge a fee for invention development services other than any payment made from a portion of the income received by a customer by virtue of such acts performed by such entity. For purposes of this subdivision, fee shall include any payment made by the customer to such entity including reimbursement for expenditures made or costs incurred by such entity; and

(5) Invention development services shall mean any act involved in the evaluation of an invention for commercial potential and the marketing, brokering, or promoting of such an invention done by or for an invention developer for the purpose of procuring a licensee or buyer for an intellectual property right in the invention.

**Source:** Laws 1991, LB 96, § 2; Laws 1993, LB 121, § 561; Laws 1995, LB 574, § 92.

**87-603 Contract for invention development services; requirements; option to terminate.**

(1) Every contract for invention development services shall be in writing and shall be subject to the Invention Development Services Disclosure Act. A copy of the written contract shall be given to the customer at the time he or she signs the contract.

(2) If it is the invention developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall so state in writing at the time the customer signs the first contract and shall supply to the customer such writing together with a written summary of the developer's normal terms, if any, of such subsequent contracts, including the approximate amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

(3) Notwithstanding any contractual provision to the contrary, no payment for invention development services shall be required, made, or received until three business days after the date on which the customer receives a copy of the contract for invention development services signed by the invention developer and the customer. Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, irrespective of the date or dates appearing in such instrument, shall be deemed payment for the purpose of this section.

(4) The parties to a contract for invention development services shall have the option to terminate the contract until payment is made. The customer may exercise the option by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of its exercise of the option, which written notice shall become effective upon receipt by the customer.

**Source:** Laws 1991, LB 96, § 3.

**87-604 Contract for invention development services; cover sheet; contents; invention developer; duties.**

(1) Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice printed thereon in boldface of at least ten-point type:

**THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY THE INVENTION DEVELOPMENT SERVICES DISCLOSURE ACT. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL THREE BUSINESS DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.**

**IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE IDEA OR INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE IDEA OR INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.**

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE (date) IS ..... . THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS ..... .

THIS CONTRACT DOES NOT PROVIDE ANY PATENT, COPYRIGHT, OR TRADEMARK PROTECTION FOR YOUR IDEA OR INVENTION. YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

(2) The invention developer shall complete the cover sheet with the proper information to be provided in the blanks. The invention developer shall insert in the first blank the date the invention developer began business or September 6, 1991, whichever is later. The numbers to be inserted in the last two blanks may be rounded to the nearest one hundred and do not need to include those who have contracted within the three immediately preceding calendar months or parts thereof. If the number to be inserted in the third blank is zero, it shall be so stated.

(3) The cover sheet shall only contain the information required by this section and the name, primary office address, and local office address of the invention developer.

**Source:** Laws 1991, LB 96, § 4.

**87-605 Contract for invention development services; written report; contents.**

With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least at quarterly intervals throughout the term of the contract, a written report which identifies the contract and which includes:

(1) A full, clear, and concise description of the services performed up to the date of the report and of the services yet to be performed; and

(2) The name and address of each and every person, firm, or corporation to whom the subject matter of the contract has been disclosed, the reason for each and every disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures.

**Source:** Laws 1991, LB 96, § 5.

**87-606 Contract for invention development services; contents.**

Every contract for invention development services shall set forth in boldface of at least ten-point type the following:

(1) The terms and conditions of payment and contract termination rights required by section 87-603;

(2) A full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer. To the extent that the description of the specific acts or services affords discretion in the invention developer as to what specific acts or services will be performed, the invention developer shall be deemed a fiduciary;

(3) A statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(4) The name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, or affiliated company that may engage in performing any of the invention development services;

(5) If any oral or written representation of estimated or projected customer earnings is given by the invention developer, a statement of that estimation or projection and a description of the data upon which it is based;

(6) The name and address of the custodian of all records and correspondence pertaining to the invention development services and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period of not less than two years after expiration of the term of the contract for invention development services, which records and correspondence shall be made available to the customer or his or her representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours upon seven days' written notice; and

(7) A statement setting forth a time schedule for performance of the invention development services, including an estimated date by which performance of the invention development services is expected to be completed.

**Source:** Laws 1991, LB 96, § 6.

**87-607 Contract for invention development services; voidable; when; civil action authorized; additional amount distributed to common schools; when; rebuttable presumption.**

(1) Any contract for invention development services which does not substantially comply with the Invention Development Services Disclosure Act shall be voidable at the option of the customer. Any contract for invention development services entered into in reliance upon any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer shall be voidable at the option of the customer. Any waiver by the customer of any of the provisions of the act shall be deemed contrary to public policy and shall be void and unenforceable.

(2) Any customer who has been injured by a violation of the act by an invention developer, by any false or fraudulent statement, representation, or omission of material fact by an invention developer, or by failure of an invention developer to make all the disclosures required by the act may recover in a civil action against the invention developer, in addition to reasonable costs and attorney's fees, the amount of actual damages sustained by the customer.

(3) If a customer establishes a claim and secures judgment on such claim under subsection (2) of this section, an amount up to two times the judgment may be recovered from the invention developer, if ordered by the court. Any amount recovered pursuant to this subsection shall be placed in a fund to be distributed to the common schools of this state.

(4) A substantial violation of any provision of the act by an invention developer or the execution by the customer of a contract for invention develop-

ment services in reliance on any such false or fraudulent statements, representations, or material omissions shall establish a rebuttable presumption of injury.

**Source:** Laws 1991, LB 96, § 7.

**87-608 Attorney General; enforcement duties; civil penalty.**

(1) For purposes of enforcing the Invention Development Services Disclosure Act, the Attorney General may conduct investigations, hold hearings, and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of subpoenas.

(2) The Attorney General shall enforce the act and may recover a civil penalty not to exceed three thousand dollars for each violation of the act and seek equitable relief to restrain any violation.

**Source:** Laws 1991, LB 96, § 8.

**87-609 Invention developer; bond; filings required; fees.**

(1) Every invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety company holding a certificate of authority to transact business in this state, the principal sum of which shall not be less than twenty-five thousand dollars in the first or any subsequent year of operation. The invention developer shall file a copy of the bond with the Secretary of State prior to the time the invention developer first commences business in this state or within ninety days after September 6, 1991, whichever is later, and shall pay an initial filing fee of one hundred dollars. The invention developer shall file an annual statement that the bond is current and shall pay a filing fee of twenty-five dollars on or before July 1 of each year after the initial filing.

(2) The bond shall be in favor of the State of Nebraska for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is injured by fraud, dishonesty, or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

**Source:** Laws 1991, LB 96, § 9.

**87-610 Remedies; not exclusive.**

Nothing in the Invention Development Services Disclosure Act shall limit any obligations, rights, or remedies that might otherwise be applicable or available under the law of this state.

**Source:** Laws 1991, LB 96, § 10.

**ARTICLE 7**

**EQUIPMENT BUSINESS REGULATION**

Section

87-701. Act, how cited.

87-702. Legislative findings.

87-703. Terms, defined.

§ 87-701

TRADE PRACTICES

Section

- 87-704. Prohibited acts.
- 87-705. Dealer agreement; terminate, cancel, or not renew; notice; sale or transfer; duties of supplier.
- 87-706. Repair parts; returns; duties of supplier.
- 87-707. Termination of dealer agreement; supplier and dealer; rights and duties; liability.
- 87-708. Death or incapacity of dealer; heirs or personal representative; rights and remedies.
- 87-709. Dealer agreement; void and unenforceable; when; violations; remedies.
- 87-710. Obligations; applicability to successors.
- 87-711. Act; applicability.

**87-701 Act, how cited.**

Sections 87-701 to 87-711 shall be known and may be cited as the Equipment Business Regulation Act.

**Source:** Laws 1991, LB 123, § 1.

**87-702 Legislative findings.**

The Legislature finds that the retail distribution and sales of agricultural and industrial equipment utilizing independent retail businesses operating under agreements with manufacturers, wholesalers, and distributors of such equipment vitally affect the general economy, public interests, and public welfare of the state and that it is necessary to regulate the business relationships between the independent dealers and the equipment manufacturers, wholesalers, and distributors.

**Source:** Laws 1991, LB 123, § 2.

**87-703 Terms, defined.**

For purposes of the Equipment Business Regulation Act:

(1) Continuing commercial relationship shall mean a relationship in which a dealer has been granted the right to sell and service equipment manufactured by a supplier;

(2) Controlling interest shall mean a combination of ownership or management interests which legally or in practical effect has the power to determine the policies under which a dealership is operated;

(3) Dealer or dealership shall mean an individual, partnership, limited liability company, corporation, association, or other form of business enterprise primarily engaged in the retail sale and service of equipment in this state pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of equipment and related services;

(4) Dealer agreement shall mean a contract or agreement, whether oral or written, between a supplier and dealer by which the dealer is granted the right to sell, distribute, and service the supplier's equipment and by which there is a continuing commercial relationship between the supplier and the dealer;

(5) Equipment shall mean any machine designed for or adapted and used for agricultural, horticultural, livestock, grazing, forestry, or industrial purposes; and

(6) Supplier shall mean the manufacturer, wholesaler, or distributor of the equipment to be sold by a dealer.

**Source:** Laws 1991, LB 123, § 3; Laws 1993, LB 121, § 562.

Pursuant to subsection (5) of this section, the Legislature did not intend for the Equipment Business Regulation Act to apply to business agreements between retail dealers of lawn and garden equipment and their suppliers. *Fontenelle Equip. v. Pattlen Enters.*, 262 Neb. 129, 629 N.W.2d 534 (2001).

#### **87-704 Prohibited acts.**

It shall be a violation of the Equipment Business Regulation Act for a supplier:

(1) To require a dealer to accept delivery of equipment, repair parts, or attachments that the dealer has not voluntarily ordered;

(2) To require a dealer to order or accept delivery of equipment with special features or attachments not included in the base list price of such equipment as publicly advertised by the supplier;

(3) To require a dealer to enter into any agreement, whether written or oral, amendatory or supplementary to an existing dealer agreement with the supplier unless such amendatory or supplementary agreement is imposed on similarly situated dealers;

(4) To take action terminating, canceling, failing to renew, or substantially changing the competitive circumstances intended by the dealer agreement due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession. This subdivision shall not apply if the dealer is in default of a security agreement in effect with the supplier; and

(5) To condition the renewal or extension of a dealer agreement on (a) the dealer's substantial renovation of its place of business or the construction, purchase, acquisition, or rental of a new place of business by the dealer unless the supplier advises the dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed renewal or extension, but in no case less than one year prior to such date, or (b) capital construction exceeding the terms of the dealer agreement in force and effect on May 2, 1991.

**Source:** Laws 1991, LB 123, § 4.

#### **87-705 Dealer agreement; terminate, cancel, or not renew; notice; sale or transfer; duties of supplier.**

(1) A supplier shall be deemed to have good cause to terminate, cancel, or not renew a dealer agreement when a dealer:

(a) Has transferred a controlling interest in the dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within sixty days after the filing, is in default under a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime punishable by a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for seven consecutive business days or has terminated business;

(f) Has relocated its place of business without the supplier's consent;

(g) Has consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales or service or warranty areas and has failed to achieve market penetration at levels consistent with similarly situated dealerships based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or has failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for the supplier and on the supplier's behalf; or

(k) Has consistently failed to substantially comply with essential and reasonable requirements imposed by the dealer agreement, but only if that requirement is also generally imposed upon similarly situated dealers in Nebraska.

(2) Except when good cause exists as provided in subdivisions (1)(a) through (f) of this section, a supplier shall give a dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide that the dealer has sixty days from receipt of the notice in which to cure any claimed deficiency, except that the dealer shall have one year from receipt of the notice to cure a deficiency described in subdivision (1)(h) of this section.

(3) If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealership or an equity ownership interest in a dealership, the supplier shall not unreasonably deny such request. The dealer's request shall be sent by certified mail and shall include reasonable financial information, personal background information, character references, and work histories for each acquiring person. The approval or denial of a request made pursuant to this subsection shall be made in writing and sent by certified mail within sixty days after receipt of the request. If the supplier has not approved or denied the request within the sixty-day period, the request is deemed approved. If a supplier denies a request made pursuant to this subsection, the supplier shall provide the dealer with a written notice of such denial that states the reasons for denial.

**Source:** Laws 1991, LB 123, § 5; Laws 2005, LB 118, § 1.

#### **87-706 Repair parts; returns; duties of supplier.**

(1) A supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold.

(2) A supplier shall at least annually provide dealers an opportunity to return surplus repair parts for credit without restrictions as follows:

(a)(i) The supplier may notify the dealers of a surplus parts return program for a time period of at least sixty days in duration during which dealers may submit a list of their surplus parts and return the parts to the supplier; or

(ii) If twelve months have elapsed and the supplier has not notified a dealer of a surplus parts return program, the dealer may submit to the supplier a request to return surplus parts and the supplier shall allow the dealer to return the parts within thirty days after receipt of the request;

(b) Subject to the other provisions of this section, a supplier shall allow a dealer to return parts with a dollar value equal to at least six percent of the total dollar value of parts purchased by the dealer from the supplier or the supplier's predecessor in interest during the twelve-month period immediately preceding either the notification to the dealer of the supplier's surplus parts return program or the month the dealer's return request is made, whichever is applicable. A dealer may elect to return a dollar value of parts equal to less than six percent of such total dollar value of parts purchased;

(c) An obsolete or superseded part may not be returned, except that any part listed in the supplier's current list of returnable parts and any superseded part that has not been the subject of a surplus parts return program as of the date of notification to the dealer by the supplier of the current surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, shall be eligible for return;

(d) To be eligible for return, parts must be in new and unused condition and must have been purchased by the dealer from the supplier to whom they are returned or the supplier's predecessor in interest;

(e) The supplier shall allow credit for a returned part of at least eighty-five percent of the current price of the part as listed in the supplier's effective price list or catalog at the date of the notification to the dealer by the supplier of the surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, or, if there is no effective price list or catalog, in the supplier's invoices;

(f) The supplier shall issue credit to the dealer within ninety days after receipt of the parts returned by the dealer;

(g) The dealer shall be presumed to have purchased the returned parts from the supplier or the supplier's predecessor in interest, and the burden shall be on the supplier to prove otherwise;

(h) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of parts which provides the dealer with greater protection;

(i) Nothing in this section shall be construed to affect the existence or enforcement of a security interest which any person may have in the parts of the dealer; and

(j) Nothing in this section shall preclude a credit for returned parts which is greater than the total amount authorized by this section.

(3) The annual parts return provided for in subsection (2) of this section may be waived by a dealer. If a majority of dealers from a single supplier choose to waive the provisions of such subsection, the supplier shall be exempt from such subsection.

**Source:** Laws 1991, LB 123, § 6.

**87-707 Termination of dealer agreement; supplier and dealer; rights and duties; liability.**

(1) Whenever any dealer enters into a dealer agreement with a supplier in which the dealer agrees to maintain an inventory of equipment, attachments, or repair parts and the dealer agreement is subsequently terminated, the supplier shall:

(a) Repurchase the inventory by:

(i) Paying one hundred percent of the net cost of all new, undamaged, and complete equipment which was purchased from the supplier no more than twenty-four months prior to the date of termination and which is resalable;

(ii) Paying eighty-five percent of the current price of all new, unused, and undamaged attachments and repair parts, including superseded repair parts, which are listed in the price lists or catalogs in use by the supplier on the date of termination; and

(iii) Either (A) paying five percent of the current price on all new, unused, and undamaged attachments and repair parts returned to cover the cost of handling, packing, and loading the attachments and repair parts or (B) performing the handling, packing, and loading; and

(b) Repurchase at fair market value specialized repair tools purchased by the dealer pursuant to requirements of the supplier from the supplier or an approved vendor of the supplier within three years prior to the date of termination and held by the dealer on the date of termination.

(2) For purposes of this section:

(a) Current price shall mean the price for the attachments, repair parts, or tools listed in the supplier's effective price list or catalog or, if there is no effective price list or catalog, in the supplier's invoices; and

(b) Net cost shall mean the price the dealer paid to the supplier for the equipment less all discounts previously allowed by the supplier to the dealer.

(3) Upon payment of the repurchase amount to the dealer, the title and right to possession of the inventory or tools shall transfer to the supplier. Notwithstanding the requirements of article 9, Uniform Commercial Code, on filing notice of a security interest, the dealer shall have a continuing security interest in the inventory or tools until payment by the supplier and shall be treated the same as if the dealer still had possession of the inventory or tools.

(4) This section shall not require the supplier to repurchase from the dealer:

(a) Any repair part or attachment which has a limited storage life or is otherwise subject to deterioration;

(b) Any repair part or attachment which is priced as a set of two or more items if the set is incomplete;

(c) Any repair part or attachment which because of its condition is not resalable as a new part or attachment without repairing or reconditioning;

(d) Any repair part or attachment which is not in new, unused, and undamaged condition;

(e) Any equipment which is not in new, unused, undamaged, and complete condition;

(f) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the supplier, of good title free and clear of all claims, liens, and encumbrances;

(g) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or

(h) Any inventory which was acquired by the dealer from any source other than the supplier or the supplier's predecessor in interest.

(5) If any supplier fails or refuses to repurchase any inventory or specialized repair tools subject to this section within ninety days after the date the supplier takes possession, the supplier shall be civilly liable for (a) one hundred percent of the net cost of the equipment and of the current price of the attachments, repair parts, and tools, (b) any freight charges paid by the dealer, and (c) all costs of financing such repurchase, including court costs and reasonable attorney's fees.

(6) Nothing in this section shall be construed to affect the existence or enforcement of a security interest which any person may have in the inventory or tools of the dealer.

**Source:** Laws 1991, LB 123, § 7; Laws 1999, LB 550, § 50.

**87-708 Death or incapacity of dealer; heirs or personal representative; rights and remedies.**

(1) In the event of the death or incapacity of a dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heirs at law if the dealer or majority stockholder died intestate or the personal representative under the terms of the deceased dealer's or majority stockholder's last will and testament if the dealer or majority stockholder died testate, repurchase the inventory and specialized repair tools from the estate as provided in section 87-707 as if the supplier had terminated the dealer agreement. The heirs or personal representative shall have twelve months from the date of the death of the dealer or majority stockholder to exercise the option. Nothing in this section shall require the repurchase if the heirs or personal representative and the supplier enter into a new dealer agreement. Nothing in this section shall prevent the application of any provisions of the dealer agreement pertaining to death of the dealer or succession to the extent such provisions are not inconsistent with this section. Nothing in this section shall entitle an heir, devisee, or personal representative of a deceased dealer or majority stockholder to continue to operate the dealership without the consent of the supplier.

(2) This section shall be supplemental to any provisions of the dealer agreement covering the return of inventory or specialized repair tools which provide the dealer with greater protection. The heirs or personal representative may pursue either the contract remedy or the remedy provided in this section, and an election to pursue the contract remedy shall not bar pursuit of the remedy provided in this section as to inventory or tools not affected by the contract remedy. Nothing in this section shall preclude a price for the inventory or tools which is greater than the total provided for in section 87-707.

**Source:** Laws 1991, LB 123, § 8.

**87-709 Dealer agreement; void and unenforceable; when; violations; remedies.**

(1) A term of a dealer agreement which is inconsistent with the terms of the Equipment Business Regulation Act shall be void and unenforceable and shall not waive any rights which are provided to a person by the act.

(2) A dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the act together with the actual costs of the action, including reasonable attorney's fees. The dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or change in competitive circumstances. The remedies authorized by this section shall not be exclusive and shall be in addition to any other remedies provided by law.

**Source:** Laws 1991, LB 123, § 9.

**87-710 Obligations; applicability to successors.**

The obligations of any supplier pursuant to the Equipment Business Regulation Act shall apply to any successor in interest of a supplier, including any purchaser of assets or stock, any surviving corporation resulting from merger, liquidation, or reorganization, any assignee, any receiver, or any trustee of the original supplier.

**Source:** Laws 1991, LB 123, § 10.

**87-711 Act; applicability.**

The Equipment Business Regulation Act shall apply to all dealer agreements in effect on May 2, 1991, which have no expiration date and are continuing agreements and to all dealer agreements entered into or renewed on or after May 2, 1991. Any dealer agreement in effect on May 2, 1991, which will terminate on a subsequent date shall be governed by the law as it existed prior to May 2, 1991.

**Source:** Laws 1991, LB 123, § 11.

**ARTICLE 8****FINANCIAL DATA PROTECTION AND CONSUMER NOTIFICATION  
OF DATA SECURITY BREACH ACT OF 2006**

## Section

- 87-801. Act, how cited.
- 87-802. Terms, defined.
- 87-803. Breach of security; investigation; notice to resident.
- 87-804. Compliance with notice requirements; manner.
- 87-805. Waiver; void and unenforceable.
- 87-806. Attorney General; powers.
- 87-807. Act; applicability.

**87-801 Act, how cited.**

Sections 87-801 to 87-807 shall be known and may be cited as the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006.

**Source:** Laws 2006, LB 876, § 1.

**87-802 Terms, defined.**

For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006:

(1) Breach of the security of the system means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system if the personal information is not used or subject to further unauthorized disclosure. Acquisition of personal information pursuant to a search warrant, subpoena, or other court order or pursuant to a subpoena or order of a state agency is not a breach of the security of the system;

(2) Commercial entity includes a corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal entity, whether for profit or not for profit;

(3) Encrypted means converted by use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key;

(4) Notice means:

(a) Written notice;

(b) Telephonic notice;

(c) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001, as such section existed on January 1, 2006;

(d) Substitute notice, if the individual or commercial entity required to provide notice demonstrates that the cost of providing notice will exceed seventy-five thousand dollars, that the affected class of Nebraska residents to be notified exceeds one hundred thousand residents, or that the individual or commercial entity does not have sufficient contact information to provide notice. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Conspicuous posting of the notice on the web site of the individual or commercial entity if the individual or commercial entity maintains a web site; and

(iii) Notice to major statewide media outlets; or

(e) Substitute notice, if the individual or commercial entity required to provide notice has ten employees or fewer and demonstrates that the cost of providing notice will exceed ten thousand dollars. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the individual or commercial entity is located, which advertisement shall be of sufficient size that it covers at least

one-quarter of a page in the newspaper and shall be published in the newspaper at least once a week for three consecutive weeks;

(iii) Conspicuous posting of the notice on the web site of the individual or commercial entity if the individual or commercial entity maintains a web site; and

(iv) Notification to major media outlets in the geographic area in which the individual or commercial entity is located;

(5) Personal information means a Nebraska resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident if either the name or the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable:

(a) Social security number;

(b) Motor vehicle operator's license number or state identification card number;

(c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;

(d) Unique electronic identification number or routing code, in combination with any required security code, access code, or password; or

(e) Unique biometric data, such as a fingerprint, voice print, or retina or iris image, or other unique physical representation.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records; and

(6) Redact means to alter or truncate data such that no more than the last four digits of a social security number, motor vehicle operator's license number, state identification card number, or account number is accessible as part of the personal information.

**Source:** Laws 2006, LB 876, § 2.

**87-803 Breach of security; investigation; notice to resident.**

(1) An individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the individual or commercial entity shall give notice to the affected Nebraska resident. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(2) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or commercial entity does not own or license shall give notice to and cooperate with the owner or

licensee of the information of any breach of the security of the system when it becomes aware of a breach if use of personal information about a Nebraska resident for an unauthorized purpose occurred or is reasonably likely to occur. Cooperation includes, but is not limited to, sharing with the owner or licensee information relevant to the breach, not including information proprietary to the individual or commercial entity.

(3) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

**Source:** Laws 2006, LB 876, § 3.

#### **87-804 Compliance with notice requirements; manner.**

(1) An individual or a commercial entity that maintains its own notice procedures which are part of an information security policy for the treatment of personal information and which are otherwise consistent with the timing requirements of section 87-803, is deemed to be in compliance with the notice requirements of section 87-803 if the individual or the commercial entity notifies affected Nebraska residents in accordance with its notice procedures in the event of a breach of the security of the system.

(2) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with section 87-803 if the individual or commercial entity notifies affected Nebraska residents in accordance with the maintained procedures in the event of a breach of the security of the system.

**Source:** Laws 2006, LB 876, § 4.

#### **87-805 Waiver; void and unenforceable.**

Any waiver of the provisions of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 is contrary to public policy and is void and unenforceable.

**Source:** Laws 2006, LB 876, § 5.

#### **87-806 Attorney General; powers.**

For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006, the Attorney General may issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of the act.

**Source:** Laws 2006, LB 876, § 6.

#### **87-807 Act; applicability.**

The Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 applies to the discovery of or notification pertaining to a breach of the security of the system that occurs on or after July 14, 2006.

**Source:** Laws 2006, LB 876, § 7.



## WAREHOUSES

# CHAPTER 88 WAREHOUSES

### Article.

1. Uniform Warehouse Receipts Act. Repealed.
2. Public Grain Warehouses. Repealed.
3. Warehousing Grain on Farms. Repealed.
4. Warehouses. Repealed.
5. Grain Warehouses. 88-501 to 88-552.
6. Warehousing Grain on Farms. Repealed.

### Cross References

#### **Constitutional provision:**

Tax exemption of goods in licensed warehouses, see Article VIII, section 2A, Constitution of Nebraska.

#### **Grain Dealer Act,** see section 75-901 et seq.

**Political subdivisions,** powers over warehouses, see sections 13-1407, 14-102, 15-209, 15-237, 16-240, and 23-174.10.

**Public grain warehouse,** provisions under Nebraska Right to Farm Act, see section 2-4402 et seq.

**Warehouse receipts,** see sections 8-141, 8-1719, and 12-1102 and Article 7, Uniform Commercial Code.

**Weights and Measures Act,** see section 89-182.01.

## ARTICLE 1

### UNIFORM WAREHOUSE RECEIPTS ACT

#### Section

88-101.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-102.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-103.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-104.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-105.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-106.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-107.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-108.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-109.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-110.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-111.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-112.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-113.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-114.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-115.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-116.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-117.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-118.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-119.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-120.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-121.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-122.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-123.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-124.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-125.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-126.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-127.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-128.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-129.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-130.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-131.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-132.	Repealed. Laws 1963, c. 544, art. 10, § 1.

Section	
88-133.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-134.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-135.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-136.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-137.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-138.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-139.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-140.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-141.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-142.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-143.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-144.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-145.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-146.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-147.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-148.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-149.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-150.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-151.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-152.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-153.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-154.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-155.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-156.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-157.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-158.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-159.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-160.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-161.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-162.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-162.01.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-163.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-164.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-165.	Repealed. Laws 1963, c. 544, art. 10, § 1.

**88-101 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-102 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-103 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-104 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-105 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-106 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-107 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-108 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-109 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-110 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-111 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-112 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-113 Repealed. Laws 1963, c. 544, art. 10, § 1.**

- 88-114 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-115 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-116 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-117 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-118 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-119 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-120 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-121 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-122 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-123 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-124 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-125 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-126 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-127 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-128 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-129 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-130 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-131 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-132 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-133 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-134 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-135 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-136 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-137 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-138 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-139 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-140 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-141 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-142 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-143 Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-144 Repealed. Laws 1963, c. 544, art. 10, § 1.

- 88-145 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-146 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-147 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-148 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-149 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-150 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-151 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-152 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-153 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-154 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-155 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-156 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-157 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-158 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-159 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-160 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-161 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-162 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-162.01 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-163 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-164 Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-165 Repealed. Laws 1963, c. 544, art. 10, § 1.

## ARTICLE 2

### PUBLIC GRAIN WAREHOUSES

- Section  
88-201. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-202. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-203. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-204. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-205. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-206. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-206.01. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-206.02. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-207. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-208. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-209. Repealed. Laws 1963, c. 544, art. 10, § 1.  
88-210. Repealed. Laws 1963, c. 544, art. 10, § 1.

Section	
88-211.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-212.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-213.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-214.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-215.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-216.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-217.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-218.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-219.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-220.	Repealed. Laws 1963, c. 544, art. 10, § 1.
88-221.	Repealed. Laws 1963, c. 544, art. 10, § 1.

**88-201 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-202 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-203 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-204 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-205 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-206 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-206.01 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-206.02 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-207 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-208 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-209 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-210 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-211 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-212 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-213 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-214 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-215 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-216 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-217 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-218 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-219 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-220 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-221 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**ARTICLE 3**

**WAREHOUSING GRAIN ON FARMS**

Section

- 88-301. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-302. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-303. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-304. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-305. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-306. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-307. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-308. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-309. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-310. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-311. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-312. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-313. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-314. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-315. Repealed. Laws 1963, c. 544, art. 10, § 1.
- 88-316. Repealed. Laws 1963, c. 544, art. 10, § 1.

**88-301 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-302 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-303 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-304 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-305 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-306 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-307 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-308 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-309 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-310 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-311 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-312 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-313 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-314 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-315 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**88-316 Repealed. Laws 1963, c. 544, art. 10, § 1.**

**ARTICLE 4**

**WAREHOUSES**

Section

- 88-401. Repealed. Laws 1987, LB 291, § 11.

Section	
88-402.	Repealed. Laws 1987, LB 291, § 11.
88-403.	Repealed. Laws 1987, LB 291, § 11.
88-404.	Repealed. Laws 1987, LB 291, § 11.
88-405.	Repealed. Laws 1987, LB 291, § 11.
88-406.	Repealed. Laws 1987, LB 291, § 11.
88-407.	Repealed. Laws 1987, LB 291, § 11.
88-408.	Repealed. Laws 1987, LB 291, § 11.
88-409.	Repealed. Laws 1988, LB 980, § 1.
88-410.	Repealed. Laws 1988, LB 980, § 1.
88-411.	Repealed. Laws 1988, LB 980, § 1.
88-412.	Repealed. Laws 1988, LB 980, § 1.
88-413.	Repealed. Laws 1988, LB 980, § 1.
88-414.	Repealed. Laws 1988, LB 980, § 1.
88-415.	Repealed. Laws 1988, LB 980, § 1.
88-416.	Repealed. Laws 1988, LB 980, § 1.
88-417.	Repealed. Laws 1988, LB 980, § 1.
88-418.	Repealed. Laws 1988, LB 980, § 1.

**88-401 Repealed. Laws 1987, LB 291, § 11.**

**88-402 Repealed. Laws 1987, LB 291, § 11.**

**88-403 Repealed. Laws 1987, LB 291, § 11.**

**88-404 Repealed. Laws 1987, LB 291, § 11.**

**88-405 Repealed. Laws 1987, LB 291, § 11.**

**88-406 Repealed. Laws 1987, LB 291, § 11.**

**88-407 Repealed. Laws 1987, LB 291, § 11.**

**88-408 Repealed. Laws 1987, LB 291, § 11.**

**88-409 Repealed. Laws 1988, LB 980, § 1.**

**88-410 Repealed. Laws 1988, LB 980, § 1.**

**88-411 Repealed. Laws 1988, LB 980, § 1.**

**88-412 Repealed. Laws 1988, LB 980, § 1.**

**88-413 Repealed. Laws 1988, LB 980, § 1.**

**88-414 Repealed. Laws 1988, LB 980, § 1.**

**88-415 Repealed. Laws 1988, LB 980, § 1.**

**88-416 Repealed. Laws 1988, LB 980, § 1.**

**88-417 Repealed. Laws 1988, LB 980, § 1.**

**88-418 Repealed. Laws 1988, LB 980, § 1.**

## ARTICLE 5

### GRAIN WAREHOUSES

#### Cross References

Agricultural Suppliers Lease Protection Act, see section 2-5501.

Grain Dealer Act, see section 75-901.

## WAREHOUSES

Section	
88-501.	Repealed. Laws 1987, LB 164, § 29.
88-502.	Repealed. Laws 1987, LB 164, § 29.
88-502.01.	Repealed. Laws 1987, LB 164, § 29.
88-502.02.	Transferred to section 88-552.
88-503.	Repealed. Laws 1987, LB 164, § 29.
88-504.	Repealed. Laws 1987, LB 164, § 29.
88-505.	Repealed. Laws 1987, LB 164, § 29.
88-505.01.	Repealed. Laws 1987, LB 164, § 29.
88-506.	Repealed. Laws 1987, LB 164, § 29.
88-507.	Repealed. Laws 1987, LB 164, § 29.
88-508.	Repealed. Laws 1987, LB 164, § 29.
88-509.	Repealed. Laws 1987, LB 164, § 29.
88-510.	Repealed. Laws 1987, LB 164, § 29.
88-511.	Repealed. Laws 1987, LB 164, § 29.
88-512.	Repealed. Laws 1987, LB 164, § 29.
88-513.	Repealed. Laws 1987, LB 164, § 29.
88-514.	Repealed. Laws 1987, LB 164, § 29.
88-515.	Repealed. Laws 1987, LB 164, § 29.
88-516.	Repealed. Laws 1987, LB 164, § 29.
88-517.	Repealed. Laws 1987, LB 164, § 29.
88-518.	Repealed. Laws 1985, LB 389, § 12.
88-519.	Repealed. Laws 1987, LB 14, § 4.
88-520.	Repealed. Laws 2000, LB 960, § 1.
88-521.	Repealed. Laws 2000, LB 960, § 1.
88-522.	Repealed. Laws 2000, LB 960, § 1.
88-523.	Repealed. Laws 1987, LB 164, § 29.
88-524.	Repealed. Laws 1987, LB 164, § 29.
88-525.	Act, how cited.
88-526.	Terms, defined.
88-527.	Warehouses; warehouseman; license required; inspection; commission; powers and duties; fees; agreements with bordering states.
88-528.	License; application; criminal background check; financial statement.
88-528.01.	Criminal history record information check; fingerprinting; when.
88-529.	License fees.
88-530.	Financial requirements; security; requirements; liability of surety.
88-530.01.	Commission; additional financial documents required; when.
88-531.	License; multiple warehouses; license fee; how computed.
88-532.	License; issuance; expiration; renewal; posting requirements.
88-533.	Increase in storage capacity; requirements; fees.
88-534.	Payment for grain; when.
88-535.	Scale ticket; issuance; prima facie evidence.
88-536.	Receipts; issuance; requirements; commission; powers and duties; registration.
88-537.	Duplicate receipt; issuance; requirements; liability.
88-538.	Duplicate receipt; issuance; effect.
88-539.	Supervisor of warehouses; appointment; powers and duties.
88-540.	Delivery of grain; damages; surrender receipt.
88-541.	Storage rates.
88-542.	Inspections authorized.
88-543.	Prohibited acts; penalty.
88-543.01.	Civil penalty.
88-544.	Storage; termination.
88-545.	Commission; enforce act; rules and regulations; violation; penalty; damages; prosecution.
88-545.01.	Commission; contracts for audit or examination work authorized; Grain Warehouse Auditing Fund; created; use; investment.
88-546.	License; suspension or revocation; procedure.
88-547.	Warehouse; closure; when; commission; powers.
88-547.01.	Deposit of grain; how treated; priority of liens; effect.
88-547.02.	Judicial proceeding; notice required.

Section	
88-548.	Federal licensee; exemption from act; duties; commission; grain probe; duties; violation; penalty.
88-549.	Warehouse; notice to person storing grain; violation; penalty.
88-550.	Grain dust inspections; Department of Environmental Quality; commission; duties.
88-551.	Fees; where credited.
88-552.	Nebraska Grain Warehouse Surveillance Cash Fund; created; use; investment.

**88-501 Repealed. Laws 1987, LB 164, § 29.**

**88-502 Repealed. Laws 1987, LB 164, § 29.**

**88-502.01 Repealed. Laws 1987, LB 164, § 29.**

**88-502.02 Transferred to section 88-552.**

**88-503 Repealed. Laws 1987, LB 164, § 29.**

**88-504 Repealed. Laws 1987, LB 164, § 29.**

**88-505 Repealed. Laws 1987, LB 164, § 29.**

**88-505.01 Repealed. Laws 1987, LB 164, § 29.**

**88-506 Repealed. Laws 1987, LB 164, § 29.**

**88-507 Repealed. Laws 1987, LB 164, § 29.**

**88-508 Repealed. Laws 1987, LB 164, § 29.**

**88-509 Repealed. Laws 1987, LB 164, § 29.**

**88-510 Repealed. Laws 1987, LB 164, § 29.**

**88-511 Repealed. Laws 1987, LB 164, § 29.**

**88-512 Repealed. Laws 1987, LB 164, § 29.**

**88-513 Repealed. Laws 1987, LB 164, § 29.**

**88-514 Repealed. Laws 1987, LB 164, § 29.**

**88-515 Repealed. Laws 1987, LB 164, § 29.**

**88-516 Repealed. Laws 1987, LB 164, § 29.**

**88-517 Repealed. Laws 1987, LB 164, § 29.**

**88-518 Repealed. Laws 1985, LB 389, § 12.**

**88-519 Repealed. Laws 1987, LB 14, § 4.**

**88-520 Repealed. Laws 2000, LB 960, § 1.**

**88-521 Repealed. Laws 2000, LB 960, § 1.**

**88-522 Repealed. Laws 2000, LB 960, § 1.**

**88-523 Repealed. Laws 1987, LB 164, § 29.**

**88-524 Repealed. Laws 1987, LB 164, § 29.****88-525 Act, how cited.**

Sections 88-525 to 88-552 shall be known and may be cited as the Grain Warehouse Act.

**Source:** Laws 1987, LB 164, § 1; Laws 1996, LB 1123, § 4; Laws 2003, LB 735, § 7; Laws 2005, LB 492, § 2.

**88-526 Terms, defined.**

As used in the Grain Warehouse Act, unless the context otherwise requires:

- (1) Commission means the Public Service Commission;
- (2) Direct delivery grain means all grain that is bought, sold, or transported in the name of a warehouse licensee, other than grain that is received at the licensed warehouse facilities;
- (3) Direct delivery obligation means the obligation of a warehouse licensee or grain dealer to transfer title to warehouse-owned grain to a producer by an in-store transfer upon the delivery of direct delivery grain. A direct delivery obligation is treated as a grain dealer obligation until such time as it is satisfied by an in-store transfer;
- (4) Grain means wheat, corn, oats, soybeans, barley, rye, flax, or sorghum which has not been processed or packaged for the purpose of distribution as seed, including, but not limited to, edible beans, whole corn plant pellets, alfalfa pellets, millet, sunflower seed, safflower seed, and any other bulk pelleted agricultural storable commodity;
- (5) Grain dealer has the same meaning as in section 75-902;
- (6) Grain in storage means any grain which has been received at any warehouse and to which title has not been transferred to the warehouseman by signed contract or priced scale ticket;
- (7) In-store transfer means a method by which a warehouse licensee transfers title to warehouse-owned grain to any person in satisfaction of a direct delivery obligation between the warehouse licensee or grain dealer and the producer, and the grain remains in the warehouse;
- (8) Post-direct delivery storage position means a storage position acquired through an in-store transfer in satisfaction of a direct delivery obligation;
- (9) Warehouse means any grain elevator, mill, grist mill, building, or receptacle in which grain is held in storage for more than ten consecutive days;
- (10) Warehouse licensee means any warehouseman who is licensed pursuant to the Grain Warehouse Act; and
- (11) Warehouseman means any person, partnership, limited liability company, corporation, or association who (a) receives grain for storage or stores or offers to store grain for legal consideration for another person, partnership, limited liability company, corporation, or association in a warehouse where delivered or (b) receives grain for shipment to other points for storage, consignment, or resale either in or out of this state.

**Source:** Laws 1987, LB 164, § 2; Laws 1993, LB 121, § 563; Laws 2003, LB 735, § 8; Laws 2005, LB 439, § 4.

**88-527 Warehouses; warehouseman; license required; inspection; commission; powers and duties; fees; agreements with bordering states.**

(1) No person shall operate a warehouse nor act as a warehouseman without a license issued pursuant to the Grain Warehouse Act. Warehouses, except warehouses which are licensed under the United States Warehouse Act, shall be licensed and regulated by the commission. If the applicant is an individual, the application shall include the applicant's social security number. Such warehouses shall be inspected by the commission at least once every twelve months.

(2) If the commission determines that additional examinations are necessary after a regular examination is completed at a warehouse, the commission may charge such warehouse for the cost of the additional examinations according to the commission's fee schedule. Warehouses shall only be charged if such examinations are for reasons of irregularities from the previous examination or if financial conditions warrant additional examinations.

(3) The commission may make available to the United States Government or any of its agencies, including the Commodity Credit Corporation, the results of inspections made and inspection reports submitted by employees of the commission upon payment of such fees as may be determined by the commission. The fees shall cover the actual cost of the services rendered in regard to providing the information.

(4) The commission may charge for inspections conducted at the request of a warehouse licensee.

(5) The commission may assess a surveillance fee against the assets of a warehouse licensee for actual expenses incurred by the commission in suspending a license or terminating the operations of a warehouse licensee. The commission may enter into contracts for such purpose and shall keep a record of all surveillance fees collected. All surveillance fees collected by the commission shall be remitted to the State Treasurer for credit to the Nebraska Grain Warehouse Surveillance Cash Fund.

(6) The commission may enter into agreements and contracts with regulators in states which border Nebraska for the purpose of licensing or examining any public grain warehouseman which operates facilities in such states. The commission shall assume all jurisdiction over any warehouseman headquartered in Nebraska regarding his or her warehouse activity. A warehouseman headquartered and licensed in another state which acquires facilities in Nebraska is under the jurisdiction of the headquarter state under the terms of such agreement or contract.

**Source:** Laws 1987, LB 164, § 3; Laws 1988, LB 872, § 1; Laws 1996, LB 1123, § 5; Laws 1997, LB 752, § 232; Laws 1999, LB 172, § 1; Laws 2003, LB 735, § 9; Laws 2005, LB 492, § 5.

**88-528 License; application; criminal background check; financial statement.**

Each applicant for a license and each warehouse licensee shall annually file an application with the commission and shall submit to a criminal background check as set forth in section 88-528.01. The application shall be in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include an audited or reviewed fiscal year-end financial statement prepared in accordance with accounting principles generally accepted by a

person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If the applicant files a reviewed fiscal year-end financial statement, the applicant shall also provide additional security pursuant to section 88-530 in such amount as the commission requires. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. The financial statement shall include: (1) A balance sheet; (2) a statement of income showing profit or loss; (3) a statement of retained earnings; (4) a statement of changes in the financial position; and (5) the accountant's certifications, assurances, opinions, comments, and notes with regard to such financial statement. An applicant may also submit a valuation of assets by competent appraisal acceptable to the commission for inclusion in computing net worth for the purpose of meeting any net worth requirements imposed by the act or rules and regulations of the commission. If a valuation of assets is submitted, no more than seventy percent of appraised value shall be used in determining compliance with net worth requirements. Such application shall set forth the location of the warehouse to be used by the applicant, its relation to railroad trackage, its capacity, its general plan and equipment, and its ownership.

If an applicant for a license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its audited or reviewed fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission. A parent company may also submit a valuation of assets on behalf of an applicant that is a wholly owned subsidiary of the parent company.

**Source:** Laws 1987, LB 164, § 4; Laws 2003, LB 735, § 10; Laws 2005, LB 52, § 4; Laws 2005, LB 439, § 5.

**Cross References**

Public accountant permit, see section 1-136.

**88-528.01 Criminal history record information check; fingerprinting; when.**

For each application filed under section 88-528 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record

check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission’s office, and if not, the application shall be returned to the applicant. The commission shall deny a warehouse license to any applicant whose primary party has been convicted of a felony financial crime.

**Source:** Laws 2003, LB 735, § 11; Laws 2005, LB 52, § 5.

**88-529 License fees.**

The commission shall charge an annual license fee for each warehouse to be operated, except as provided in section 88-531. The fee for any license issued for less than twelve months shall be prorated based on its duration. The annual license fee shall be as provided in this section.

Capacity in Bushels	Fee
0 - 10,000 .....	\$ 45
10,001 - 25,000 .....	57
25,001 - 50,000 .....	68
50,001 - 75,000 .....	78
75,001 - 100,000 .....	90
100,001 - 150,000 .....	102
150,001 - 200,000 .....	113
200,001 - 250,000 .....	125
250,001 - 300,000 .....	135
300,001 - 350,000 .....	147
350,001 - 400,000 .....	156
400,001 - 450,000 .....	170
450,001 - 500,000 .....	180
500,001 - 600,000 .....	192
600,001 - 700,000 .....	203
700,001 - 800,000 .....	215
800,001 - 900,000 .....	225
900,001 - 1,000,000 .....	237
1,000,001 - 2,000,000 .....	338
2,000,001 - 3,000,000 .....	395
3,000,001 - 4,000,000 .....	450
4,000,001 - 5,000,000 .....	507
5,000,001 - 6,000,000 .....	563
6,000,001 - 7,000,000 .....	620
7,000,001 - 8,000,000 .....	675
8,000,001 - 9,000,000 .....	732
9,000,001 - 10,000,000 .....	788
10,000,001 - 11,000,000 .....	845
11,000,001 - 15,000,000 .....	1,070
15,000,001 - 20,000,000 .....	1,350
20,000,001 - 25,000,000 .....	1,632
25,000,001 - 30,000,000 .....	1,913
30,000,001 - 40,000,000 .....	2,475
40,000,001 or more .....	3,375

**Source:** Laws 1987, LB 164, § 5; Laws 2003, LB 187, § 33.

**88-530 Financial requirements; security; requirements; liability of surety.**

Each applicant shall show sufficient net worth or stockholders’ equity to conform with the financial requirements which the commission shall establish

by the adoption and promulgation of rules and regulations. Applicants shall file with the commission security in the form of a bond, a certificate of deposit, an irrevocable letter of credit, United States bonds or treasury notes, or other public debt obligations of the United States which are unconditionally guaranteed as to both principal and interest by the United States in such sum as the commission may require and in the form and of the kind prescribed by the commission. The security shall be in an amount set by the commission pursuant to rules and regulations, but shall not be less than twenty-five thousand dollars. The security shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and of each person who holds a check for purchase of grain stored in such warehouse which was issued by the warehouse licensee not more than five business days prior to the cutoff date of operation of the warehouse, which shall be the date the commission officially closes the warehouse. The security shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and rules and regulations adopted and promulgated by the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. For an applicant who has filed a reviewed fiscal year-end financial statement pursuant to section 88-528, the commission shall require additional security in an amount set by the commission pursuant to rules and regulations, which shall not be less than twenty-five thousand dollars and not more than five hundred thousand dollars. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

**Source:** Laws 1987, LB 164, § 6; Laws 1989, LB 78, § 29; Laws 2003, LB 735, § 12.

**88-530.01 Commission; additional financial documents required; when.**

In addition to the reviewed fiscal year-end financial statement required by section 88-528 and to detect noncompliance with financial requirements established by the commission pursuant to section 88-530, the commission shall, for good cause shown as determined by criteria set forth in commission rules and regulations, require (1) a verified report of the total grain inventory or (2) an audited financial statement. A verified report of grain inventory or audited financial statement shall be prepared in accordance with accounting principles generally accepted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

**Source:** Laws 2003, LB 735, § 13; Laws 2005, LB 52, § 6.

**88-531 License; multiple warehouses; license fee; how computed.**

Only one license may be required for the operation of all warehouses operated by one warehouse licensee if:

- (1) Only one set of books is kept for the warehouses;
- (2) Cost slips, scale tickets, warehouse receipts, and checks are issued in one series for grain received or stored in such warehouses; and
- (3) The warehouses are operated in conjunction with each other.

If the commission finds that enforcement of the Grain Warehouse Act or the interests of the storers requires that warehouses operated by the same licensee at separate locations be licensed separately, it may require separate licenses for such facilities pursuant to rules and regulations adopted and promulgated by the commission.

The license fee and security required of such warehouse licensee shall be computed on the basis of the separate capacities of each warehouse.

**Source:** Laws 1987, LB 164, § 7; Laws 1989, LB 78, § 30.

**88-532 License; issuance; expiration; renewal; posting requirements.**

Upon payment of the license fee and approval by the commission of the application and the bond, certificate of deposit, irrevocable letter of credit, or other security described in section 88-530, the license shall be issued. A new or renewed license shall expire twelve calendar months after the effective date of the issuance or renewal of such license. A license may be kept in continuous force and effect if the warehouse licensee files a proper application for renewal and security which the commission can approve prior to the date of termination.

Notice of the security in the form prescribed by the commission shall be posted in a conspicuous place in each warehouse showing the amount of security on the stored grain. Each warehouse licensee shall also post in a conspicuous place in each warehouse office the storage fees and receiving and load-out fees charged for each type of grain stored.

**Source:** Laws 1987, LB 164, § 8; Laws 1989, LB 78, § 31.

**88-533 Increase in storage capacity; requirements; fees.**

No warehouse licensee shall increase storage capacity without first obtaining the approval of the commission and effecting such revisions in its security as may be required by the commission. Additional fees may be imposed for increases in storage capacity or for any other changes in the license in such reasonable amounts as may be prescribed by the commission.

**Source:** Laws 1987, LB 164, § 9.

**88-534 Payment for grain; when.**

Payment to the seller for grain purchased by a warehouse licensee shall be made upon demand by the seller except as otherwise provided by written or oral contract between the parties.

**Source:** Laws 1987, LB 164, § 10.

**88-535 Scale ticket; issuance; prima facie evidence.**

Each warehouse licensee shall, at the time of the delivery of grain to or the shipment of grain from a warehouse, issue a lawful scale ticket to the owner or

consignee of such grain, except when the delivery or shipment is by rail or water. The scale tickets shall contain all information prescribed by the commission. A scale ticket issued by a warehouse licensee shall be prima facie evidence of the holder's claim of title to the goods described in such ticket.

**Source:** Laws 1987, LB 164, § 11.

**88-536 Receipts; issuance; requirements; commission; powers and duties; registration.**

(1) Within fifteen days after demand by the owner or deliverer of any grain to a warehouse for storage, the warehouse licensee shall issue a lawful negotiable or nonnegotiable receipt to such owner or deliverer of such grain. The receipt shall state the date of delivery, the name of the owner, and the grade, gross weight, dockage, and net weight of the grain represented in the receipt.

(2)(a) The commission shall prepare forms for such receipts and may adopt procedures for the electronic issuance of such receipts. All warehouse licensees shall either use forms prepared by the commission for such receipts or follow procedures adopted by the commission for electronic issuance of such receipts. Warehouse licensees that use forms prepared by the commission shall register such receipts with the commission.

(b) The commission shall fix charges to be assessed and collected for such warehouse receipt forms not to exceed the cost of printing, delivering, and handling. Payment of such charges shall be made in advance of delivery of such receipt forms and shall entitle each such receipt to registration without any further charge or fee. The commission may make refunds of such charges for such unused receipt forms as may be returned to the commission.

(c) All procedures for electronic filing of receipts adopted by the commission shall comply with section 86-611. The commission may adopt authentication procedures to verify receipts issued electronically. Compliance with the authentication procedures adopted by the commission shall have the same validity as a signature on any receipt.

(3) Any warehouse licensee may issue a receipt to himself or herself as the owner of grain stored in his or her own warehouse, which receipt shall be registered with the commission. Upon receiving any such grain warehouse receipt for registration and being satisfied that the provisions of the Grain Warehouse Act and any rules and regulations adopted and promulgated pursuant to the act have been complied with, the commission shall cause such receipt to be registered.

**Source:** Laws 1987, LB 164, § 12; Laws 2003, LB 735, § 14.

**88-537 Duplicate receipt; issuance; requirements; liability.**

When a negotiable warehouse receipt has been lost or destroyed, the commission may approve the delivery of the grain or the issuance of a duplicate receipt upon satisfactory proof of such loss or destruction if the party who requests it furnishes a bond with corporate or personal surety, to be approved by the commission, conditioned to indemnify the warehouse licensee or any holder or other person entitled to the grain against all loss, liability, or expense which may be sustained by reason of such delivery. The delivery of the grain or the issuance of a duplicate receipt pursuant to the approval of the commission shall not relieve the warehouse licensee from liability to a person to whom the

negotiable receipt has been or will be negotiated for value without notice of the proceedings before the commission or of the delivery of the grain or the issuance of the duplicate receipt pursuant to such proceedings.

**Source:** Laws 1987, LB 164, § 13.

**88-538 Duplicate receipt; issuance; effect.**

A duplicate receipt shall not be issued by any warehouse licensee without prior approval by the commission. A receipt so issued, upon the face of which the word duplicate is plainly placed, shall be a representation and warranty by the warehouse licensee that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issuance of the duplicate.

**Source:** Laws 1987, LB 164, § 14.

**88-539 Supervisor of warehouses; appointment; powers and duties.**

For the proper enforcement of the Grain Warehouse Act, the commission shall designate and appoint a person experienced in the handling of grain as supervisor of warehouses. The supervisor may perform all duties required of the commission pursuant to the Grain Warehouse Act subject to the approval of the commission.

**Source:** Laws 1987, LB 164, § 15.

**88-540 Delivery of grain; damages; surrender receipt.**

Upon demand, presentation of receipts, and payment of lawful charges, the grain represented by such receipts or any part of such grain shall be immediately delivered to the owner or his or her order, and the part delivered shall not be subject to any further charge for storage after such demand for delivery has been made and facilities for receiving and shipping the grain have been provided. If demand is made for only a part of the grain represented by any receipt, the amount delivered shall be entered in a proper blank upon the face of such receipt and delivery of such grain acknowledged on the receipt by the person holding such receipt. For any grain not delivered within twenty-four hours after such demand, the warehouse licensee shall be liable, upon his, her, or its security, to the owner in damages not exceeding one cent per bushel for each day's delay unless he, she, or it delivers to different owners in the order demanded as rapidly as can be done by ordinary diligence. If terminal delivery of grain is demanded, the warehouse licensee shall issue and deliver to the owner or his or her order a surrender receipt, which shall conform to the receipt issued for the grain under section 88-536, making such grain deliverable in its net amount at any terminal market or transit point designated by the owner of such receipt. Such grain shall be subject to the usual freight, weighing, and switching charges when it arrives at the terminal so designated, and the freight shall be computed on the basis of the gross weight of the grain represented by such surrender receipt. The owner of the receipt may, at his, her, or its option, order the car in which the grain covered by the surrender receipt is to be transported, in which case the grain shall be delivered when the car so ordered is placed at the warehouse.

**Source:** Laws 1987, LB 164, § 16.

**88-541 Storage rates.**

Not less than once each year, the commission shall by order fix reasonable storage rates, and no warehouse licensee shall charge a lesser or greater rate, except upon application to and a hearing before the commission. If, after a hearing, the commission finds that a lesser or greater rate should be ordered, it shall enter a supplemental order fixing a different rate for such applicant. Such charges shall be full compensation for the receiving, handling, storing, delivering, and insuring of grain. No discrimination shall be made between different customers by any state-licensed grain warehouse either in facilities, charges, or handling of any grain, except that members of a cooperative may be given preference in storage facilities in warehouses of the cooperative. The rates charged to any governmental agency shall be exempt from commission regulation.

**Source:** Laws 1987, LB 164, § 17.

**88-542 Inspections authorized.**

The property, books, records, accounts, papers, and proceedings of every warehouse shall, at all times during business hours, be subject to inspection by the commission.

**Source:** Laws 1987, LB 164, § 18.

**88-543 Prohibited acts; penalty.**

(1) No warehouse licensee or partner, limited liability company member, officer, or agent thereof shall:

(a) Issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for grain, there shall be a presumption that the warehouse licensee or partner, limited liability company member, officer, or agent thereof has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section;

(b) Create a post-direct delivery storage position without issuing proper documentation consistent with rules and regulations adopted and promulgated by the commission;

(c) Create a post-direct delivery storage position at any time the warehouse licensee does not have sufficient warehouse-owned grain or grain in open storage to cover the storage position created for the benefit of the producer; or

(d) Record grain as being received or loaded out that has not been physically deposited in or physically removed from the warehouse.

(2) Any warehouse licensee or partner, limited liability company member, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of a Class IV felony.

**Source:** Laws 1987, LB 164, § 19; Laws 1989, LB 78, § 32; Laws 1993, LB 121, § 564; Laws 1994, LB 884, § 94; Laws 2005, LB 439, § 6.

**88-543.01 Civil penalty.**

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Warehouse Act.

**Source:** Laws 2003, LB 735, § 15.

**88-544 Storage; termination.**

At the election of the warehouse licensee and under rules and regulations adopted and promulgated by the commission, storage in a warehouse operated by such licensee may be terminated on application to the commission and upon good cause shown according to the rules and regulations of the commission. Subject to such rules and regulations as the commission may adopt and promulgate, any storage contract on any or all such grain may be terminated by the owner at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to sell the same.

**Source:** Laws 1987, LB 164, § 20; Laws 1992, LB 366, § 63.

**88-545 Commission; enforce act; rules and regulations; violation; penalty; damages; prosecution.**

The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person or partner, limited liability company member, officer, or agent of any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

**Source:** Laws 1987, LB 164, § 21; Laws 1989, LB 78, § 33; Laws 1993, LB 121, § 565; Laws 1994, LB 884, § 95.

**88-545.01 Commission; contracts for audit or examination work authorized; Grain Warehouse Auditing Fund; created; use; investment.**

(1) The commission may enter into contracts with public or private entities which provide a benefit for both parties for purposes of performing audit or examination work. The commission shall conduct the work as time permits and shall not allow the work to conflict with the commission's primary responsibility of performing grain warehouse examinations within the prescribed statutory time.

(2) Fees from audit or examination contracts shall be remitted by the commission to the State Treasurer for credit to the Grain Warehouse Auditing Fund which is created. The fund shall be available to the commission to buy material and equipment for performing audits and examinations or to offset the cost of performing audits and examinations. Any money in the 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.

**Source:** Laws 1996, LB 1123, § 7.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**88-546 License; suspension or revocation; procedure.**

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any warehouse licensee for failure to

comply with the requirements of the Grain Warehouse Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the warehouse licensee with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a license pending the determination of the complaint.

**Source:** Laws 1987, LB 164, § 22.

**88-547 Warehouse; closure; when; commission; powers.**

If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse, if a license expires and is not renewed, if a license is surrendered to or canceled or revoked by the commission for violation of any statute or rule or regulation adopted and promulgated by the commission, or if a warehouse is operated without a license, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. No claim of the licensee for grain stored shall be honored until the claims of all other owners, depositors, and storers have been paid in full. Such distribution may be made in grain or in proceeds from the sale of grain. If the commission closes the warehouse and takes title to the grain, such action shall operate as a stay of the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding to take title to the grain that was or could have been commenced before such action by the commission;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain pending final determination of the valid owners, depositors, or storers and distribution of such proceeds.

**Source:** Laws 1987, LB 164, § 23; Laws 1989, LB 78, § 34; Laws 1992, LB 366, § 64; Laws 2005, LB 492, § 6.

**88-547.01 Deposit of grain; how treated; priority of liens; effect.**

(1) For purposes of the Grain Warehouse Act, whenever any grain is physically deposited into any public warehouse and a scale ticket or warehouse receipt is issued therefor, such deposit shall be grain in storage. Such deposit does not

constitute a sale of the grain, except grain deposited by priced scale ticket or signed contract passing title to the warehouse licensee.

(2) Upon the commission's closure of a warehouse and taking title to grain within the warehouse pursuant to section 88-547, grain contained in a warehouse, including grain owned by the warehouse licensee, is subject to a first priority lien in favor of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse licensee regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. All the grain in the warehouse, whether stored or not, first shall be applied at all times to the satisfaction of all valid owners, depositors, or storers of grain who hold evidence of ownership of grain.

(3) In the event no distribution is made pursuant to subdivision (1) of section 88-547 and the commission transfers title to the grain back to the warehouse or to another person, then the first priority lien created under this section shall terminate. Nothing in this section shall affect any other rights, including rights of ownership in grain stored at the warehouse, of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. Nothing in this section shall prevent the commission from subsequently closing the warehouse and taking other action pursuant to section 88-547.

**Source:** Laws 2005, LB 492, § 3.

**88-547.02 Judicial proceeding; notice required.**

Prior to or within ten days after any creditor of the warehouse licensee commences a judicial proceeding to reduce to judgment, foreclose, or otherwise enforce any claim on a creditor's lien or security interest attached to grain contained in the warehouse, the creditor shall serve written notice on the executive director of the commission.

**Source:** Laws 2005, LB 492, § 4.

**88-548 Federal licensee; exemption from act; duties; commission; grain probe; duties; violation; penalty.**

(1) Any grain dealer, person, firm, corporation, or association in this state licensed under the United States Warehouse Act shall be exempt from the Grain Warehouse Act, except that each licensee under the United States Warehouse Act shall (a) annually notify the commission in writing of such license and shall notify the commission at once in writing if the license is terminated, canceled, or suspended and (b) post notification of such licensee's bond under the United States Warehouse Act in a conspicuous place of business listing the total amount of bond on the stored grain.

(2) No warehouse licensee, licensee under the United States Warehouse Act, or grain dealer licensed pursuant to section 75-903 shall use end-intake air probes which use a vacuum to collect a sample from a load of grain to determine foreign material content. The commission shall adopt and promulgate rules and regulations regarding approval of grain probes. Any person who violates this subsection shall be guilty of a Class I misdemeanor.

**Source:** Laws 1987, LB 164, § 24.

## Cross References

Grain Dealer Act, see section 75-901.

**88-549 Warehouse; notice to person storing grain; violation; penalty.**

At least once each calendar year and not later than one year from the date of receipt of the previous written notice, each warehouse licensee shall send written notice to each person who stores grain in such warehouse at such person's last-known address specifying the type and amount of grain in storage, the location at which the grain is being stored, and the current rate of storage. Any warehouse licensee who violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1987, LB 164, § 25; Laws 1992, LB 366, § 65.

**88-550 Grain dust inspections; Department of Environmental Quality; commission; duties.**

The Department of Environmental Quality and the commission shall, during the course of their regular inspections required by law, inspect warehouses for conditions which are or may be conducive to grain dust explosions. Such conditions shall include, but not be limited to, the presence at the warehouse of excessive grain dust, faulty equipment, or any other condition which could reasonably lead to an explosion if not corrected. The department and commission shall report any such condition to the State Fire Marshal as soon as practicable after each inspection.

**Source:** Laws 1987, LB 164, § 26; Laws 1993, LB 3, § 73.

**88-551 Fees; where credited.**

Except as provided in sections 88-527, 88-545.01, and 88-552, all fees collected pursuant to the Grain Warehouse Act shall be paid to the State Treasurer and credited to the General Fund.

**Source:** Laws 1987, LB 164, § 27; Laws 1996, LB 1123, § 6.

**88-552 Nebraska Grain Warehouse Surveillance Cash Fund; created; use; investment.**

There is hereby created in the state treasury a fund to be known as the Nebraska Grain Warehouse Surveillance Cash Fund. Such fund shall be used solely for disbursing funds and receiving reimbursement for services performed by the commission in the suspension or termination of a warehouse operation. All money received by the commission for such services shall be remitted to the State Treasurer for credit to such fund. Any money in the 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.

**Source:** Laws 1986, LB 137, § 1; R.S.1943, (1981), § 88-502.02; Laws 1987, LB 164, § 28; Laws 1995, LB 7, § 154.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 6

WAREHOUSING GRAIN ON FARMS

Section

- 88-601. Repealed. Laws 1989, LB 36, § 1.
- 88-602. Repealed. Laws 1989, LB 36, § 1.
- 88-603. Repealed. Laws 1989, LB 36, § 1.
- 88-604. Repealed. Laws 1989, LB 36, § 1.
- 88-605. Repealed. Laws 1989, LB 36, § 1.
- 88-606. Repealed. Laws 1989, LB 36, § 1.
- 88-607. Repealed. Laws 1989, LB 36, § 1.
- 88-608. Repealed. Laws 1989, LB 36, § 1.
- 88-609. Repealed. Laws 1989, LB 36, § 1.
- 88-610. Repealed. Laws 1989, LB 36, § 1.
- 88-611. Repealed. Laws 1989, LB 36, § 1.
- 88-612. Repealed. Laws 1989, LB 36, § 1.
- 88-613. Repealed. Laws 1989, LB 36, § 1.
- 88-614. Repealed. Laws 1989, LB 36, § 1.
- 88-615. Repealed. Laws 1989, LB 36, § 1.
- 88-616. Repealed. Laws 1989, LB 36, § 1.

**88-601 Repealed. Laws 1989, LB 36, § 1.**

**88-602 Repealed. Laws 1989, LB 36, § 1.**

**88-603 Repealed. Laws 1989, LB 36, § 1.**

**88-604 Repealed. Laws 1989, LB 36, § 1.**

**88-605 Repealed. Laws 1989, LB 36, § 1.**

**88-606 Repealed. Laws 1989, LB 36, § 1.**

**88-607 Repealed. Laws 1989, LB 36, § 1.**

**88-608 Repealed. Laws 1989, LB 36, § 1.**

**88-609 Repealed. Laws 1989, LB 36, § 1.**

**88-610 Repealed. Laws 1989, LB 36, § 1.**

**88-611 Repealed. Laws 1989, LB 36, § 1.**

**88-612 Repealed. Laws 1989, LB 36, § 1.**

**88-613 Repealed. Laws 1989, LB 36, § 1.**

**88-614 Repealed. Laws 1989, LB 36, § 1.**

**88-615 Repealed. Laws 1989, LB 36, § 1.**

**88-616 Repealed. Laws 1989, LB 36, § 1.**



**WEIGHTS AND MEASURES**

**CHAPTER 89**  
**WEIGHTS AND MEASURES**

Article.

1. General Provisions.
  - (a) General Provisions. 89-101 to 89-182. Repealed.
  - (b) Weights and Measures Act. 89-182.01 to 89-1,103.
  - (c) Grain Moisture Measuring Devices. 89-1,104 to 89-1,108.
2. Nebraska Sugar Beet Weighing and Testing Act. Repealed

**Cross References**

**Acre-foot**, defined, see section 46-228.

**Agricultural Liming Materials Act**, see section 2-4301.

**Boxing gloves**, minimum weight, see section 81-8,134.

**Department of Agriculture**, general powers, see section 81-201.

**Irrigation:**

Automatic measuring devices, requirement, see section 46-158.

Standards of measurement for adjudication of water rights, see section 46-228.

**Kilowatt hour**, watt, defined, basis for electric service charges, see sections 70-407 to 70-409.

**Liquefied petroleum gas**, measurement standards, see sections 57-508 to 57-517.

**Municipal powers:**

Cities of the first class, see section 16-224.

Cities of the second class and villages, see section 17-554.

**Nebraska Commercial Fertilizer and Soil Conditioner Act**, see section 81-2,162.22.

**Nebraska Graded Egg Act**, see section 2-3525.

**Nebraska Origin and Premium Quality Grain**, requirements, see sections 2-3813 and 2-3814.

**Pesticide Act**, see section 2-2622.

**Reservoirs**, standards of measurement of storage, see section 46-228.

**Standard time**, defined, use required, see sections 49-1301 and 49-1302.

**State weighing stations**, see sections 60-1301 to 60-1309.

**ARTICLE 1**

**GENERAL PROVISIONS**

(a) GENERAL PROVISIONS

Section	
89-101.	Repealed. Laws 1972, LB 1413, § 23.
89-102.	Repealed. Laws 1972, LB 1413, § 23.
89-103.	Repealed. Laws 1972, LB 1413, § 23.
89-104.	Repealed. Laws 1972, LB 1413, § 23.
89-105.	Repealed. Laws 1972, LB 1413, § 23.
89-106.	Repealed. Laws 1972, LB 1413, § 23.
89-107.	Repealed. Laws 1972, LB 1413, § 23.
89-108.	Repealed. Laws 1972, LB 1413, § 23.
89-109.	Repealed. Laws 1972, LB 1413, § 23.
89-110.	Repealed. Laws 1972, LB 1413, § 23.
89-111.	Repealed. Laws 1972, LB 1413, § 23.
89-112.	Repealed. Laws 1972, LB 1413, § 23.
89-113.	Repealed. Laws 1972, LB 1413, § 23.
89-114.	Repealed. Laws 1972, LB 1413, § 23.
89-115.	Repealed. Laws 1972, LB 1413, § 23.
89-116.	Repealed. Laws 1972, LB 1413, § 23.
89-117.	Repealed. Laws 1972, LB 1413, § 23.
89-118.	Repealed. Laws 1972, LB 1413, § 23.
89-119.	Repealed. Laws 1972, LB 1413, § 23.
89-120.	Repealed. Laws 1972, LB 1413, § 23.
89-121.	Repealed. Laws 1972, LB 1413, § 23.
89-122.	Repealed. Laws 1972, LB 1413, § 23.

## WEIGHTS AND MEASURES

Section	
89-123.	Repealed. Laws 1972, LB 1413, § 23.
89-124.	Repealed. Laws 1972, LB 1413, § 23.
89-125.	Repealed. Laws 1972, LB 1413, § 23.
89-126.	Repealed. Laws 1972, LB 1413, § 23.
89-127.	Repealed. Laws 1972, LB 1413, § 23.
89-128.	Repealed. Laws 1972, LB 1413, § 23.
89-129.	Repealed. Laws 1972, LB 1413, § 23.
89-130.	Repealed. Laws 1972, LB 1413, § 23.
89-131.	Repealed. Laws 1972, LB 1413, § 23.
89-132.	Repealed. Laws 1972, LB 1413, § 23.
89-133.	Repealed. Laws 1972, LB 1413, § 23.
89-134.	Repealed. Laws 1972, LB 1413, § 23.
89-135.	Repealed. Laws 1972, LB 1413, § 23.
89-136.	Repealed. Laws 1972, LB 1413, § 23.
89-137.	Repealed. Laws 1972, LB 1413, § 23.
89-138.	Repealed. Laws 1972, LB 1413, § 23.
89-139.	Repealed. Laws 1972, LB 1413, § 23.
89-140.	Repealed. Laws 1972, LB 1413, § 23.
89-141.	Repealed. Laws 1972, LB 1413, § 23.
89-142.	Repealed. Laws 1969, c. 20, § 19.
89-143.	Repealed. Laws 1969, c. 20, § 19.
89-144.	Repealed. Laws 1969, c. 20, § 19.
89-145.	Repealed. Laws 1969, c. 20, § 19.
89-146.	Repealed. Laws 1969, c. 20, § 19.
89-147.	Repealed. Laws 1969, c. 20, § 19.
89-148.	Repealed. Laws 1969, c. 20, § 19.
89-149.	Repealed. Laws 1969, c. 20, § 19.
89-150.	Repealed. Laws 1969, c. 20, § 19.
89-151.	Repealed. Laws 1969, c. 20, § 19.
89-152.	Repealed. Laws 1969, c. 20, § 19.
89-153.	Repealed. Laws 1969, c. 20, § 19.
89-154.	Repealed. Laws 1972, LB 1413, § 23.
89-155.	Repealed. Laws 1972, LB 1413, § 23.
89-156.	Repealed. Laws 1972, LB 1413, § 23.
89-157.	Repealed. Laws 1972, LB 1413, § 23.
89-158.	Repealed. Laws 1972, LB 1413, § 23.
89-159.	Repealed. Laws 1972, LB 1413, § 23.
89-160.	Repealed. Laws 1972, LB 1413, § 23.
89-161.	Repealed. Laws 1972, LB 1413, § 23.
89-162.	Repealed. Laws 1972, LB 1413, § 23.
89-163.	Repealed. Laws 1972, LB 1413, § 23.
89-164.	Repealed. Laws 1972, LB 1413, § 23.
89-165.	Repealed. Laws 1972, LB 1413, § 23.
89-166.	Repealed. Laws 1972, LB 1413, § 23.
89-167.	Repealed. Laws 1972, LB 1413, § 23.
89-168.	Repealed. Laws 1972, LB 1413, § 23.
89-169.	Repealed. Laws 1972, LB 1413, § 23.
89-170.	Repealed. Laws 1945, c. 260, § 5.
89-171.	Repealed. Laws 1972, LB 1413, § 23.
89-172.	Repealed. Laws 1972, LB 1413, § 23.
89-173.	Repealed. Laws 1972, LB 1413, § 23.
89-174.	Repealed. Laws 1972, LB 1413, § 23.
89-175.	Repealed. Laws 1972, LB 1413, § 23.
89-176.	Repealed. Laws 1972, LB 1413, § 23.
89-177.	Repealed. Laws 1972, LB 1413, § 23.
89-178.	Repealed. Laws 1972, LB 1413, § 23.
89-179.	Repealed. Laws 1972, LB 1413, § 23.
89-180.	Repealed. Laws 1972, LB 1413, § 23.
89-181.	Repealed. Laws 1972, LB 1413, § 23.
89-182.	Repealed. Laws 1972, LB 1413, § 23.

## Section

## (b) WEIGHTS AND MEASURES ACT

- 89-182.01. Act, how cited.
- 89-183. Terms, defined.
- 89-184. Units of measurement; recognition.
- 89-185. Standards; primary and secondary.
- 89-186. Handbooks; adoption by reference.
- 89-186.01. Commercial weighing and measuring devices; Certificate of Conformance; required; when.
- 89-187. Director of Agriculture; duties; fees; penalty.
- 89-187.01. Weighing and measuring establishment; permit required.
- 89-187.02. Permit; application; fee.
- 89-187.03. Permit; placed-in-service report or inspection; denial of permit; procedure.
- 89-187.04. Permit; placed-in-service report or inspection; when not required.
- 89-187.05. Permit; posting; changes requiring notice to department.
- 89-187.06. Permit; governmental agencies; exempt.
- 89-187.07. Permitholder; duties; disciplinary actions.
- 89-187.08. Notice or order; service; contents; hearings.
- 89-188. Director; powers.
- 89-189. Repealed. Laws 1991, LB 356, § 36.
- 89-190. Repealed. Laws 1991, LB 356, § 36.
- 89-191. Repealed. Laws 1991, LB 356, § 36.
- 89-192. Commodities; sale; weight, measure, count.
- 89-193. Invoice; when required; contents.
- 89-194. Package; label; contents.
- 89-195. Package; price per pound and total selling price; required.
- 89-196. Advertisement with price; declaration of quantity and identity.
- 89-196.01. Violations; cease and desist order; enforcement of act.
- 89-197. Unlawful acts.
- 89-198. Restraining order or injunction; when.
- 89-199. Weighing and measuring devices; presumption.
- 89-1,100. Weights and Measures Administrative Fund; created; use; investment; fees, penalties, and other money; lien.
- 89-1,101. Violations; penalty.
- 89-1,101.01. Violations; costs of enforcement.
- 89-1,101.02. Records.
- 89-1,102. Repealed. Laws 1991, LB 356, § 36.
- 89-1,102.01. Division of Weights and Measures; established.
- 89-1,103. Act, how construed.

## (c) GRAIN MOISTURE MEASURING DEVICES

- 89-1,104. Grain moisture measuring devices; inspections; fee.
- 89-1,104.01. Moisture Testing Examination Fund; created; use; investment; State Treasurer; duties.
- 89-1,105. Grain moisture measuring devices; make comparative tests.
- 89-1,106. Grain moisture measuring devices; comparative tests; sealing or marking.
- 89-1,107. Grain moisture measuring devices; use in buying and selling grain; approval; violations; penalty; exception.
- 89-1,108. Grain moisture measuring devices; sections; violations; penalty.

## (a) GENERAL PROVISIONS

**89-101 Repealed. Laws 1972, LB 1413, § 23.**

**89-102 Repealed. Laws 1972, LB 1413, § 23.**

**89-103 Repealed. Laws 1972, LB 1413, § 23.**

**89-104 Repealed. Laws 1972, LB 1413, § 23.**

- 89-105 Repealed. Laws 1972, LB 1413, § 23.
- 89-106 Repealed. Laws 1972, LB 1413, § 23.
- 89-107 Repealed. Laws 1972, LB 1413, § 23.
- 89-108 Repealed. Laws 1972, LB 1413, § 23.
- 89-109 Repealed. Laws 1972, LB 1413, § 23.
- 89-110 Repealed. Laws 1972, LB 1413, § 23.
- 89-111 Repealed. Laws 1972, LB 1413, § 23.
- 89-112 Repealed. Laws 1972, LB 1413, § 23.
- 89-113 Repealed. Laws 1972, LB 1413, § 23.
- 89-114 Repealed. Laws 1972, LB 1413, § 23.
- 89-115 Repealed. Laws 1972, LB 1413, § 23.
- 89-116 Repealed. Laws 1972, LB 1413, § 23.
- 89-117 Repealed. Laws 1972, LB 1413, § 23.
- 89-118 Repealed. Laws 1972, LB 1413, § 23.
- 89-119 Repealed. Laws 1972, LB 1413, § 23.
- 89-120 Repealed. Laws 1972, LB 1413, § 23.
- 89-121 Repealed. Laws 1972, LB 1413, § 23.
- 89-122 Repealed. Laws 1972, LB 1413, § 23.
- 89-123 Repealed. Laws 1972, LB 1413, § 23.
- 89-124 Repealed. Laws 1972, LB 1413, § 23.
- 89-125 Repealed. Laws 1972, LB 1413, § 23.
- 89-126 Repealed. Laws 1972, LB 1413, § 23.
- 89-127 Repealed. Laws 1972, LB 1413, § 23.
- 89-128 Repealed. Laws 1972, LB 1413, § 23.
- 89-129 Repealed. Laws 1972, LB 1413, § 23.
- 89-130 Repealed. Laws 1972, LB 1413, § 23.
- 89-131 Repealed. Laws 1972, LB 1413, § 23.
- 89-132 Repealed. Laws 1972, LB 1413, § 23.
- 89-133 Repealed. Laws 1972, LB 1413, § 23.
- 89-134 Repealed. Laws 1972, LB 1413, § 23.
- 89-135 Repealed. Laws 1972, LB 1413, § 23.

- 89-136 Repealed. Laws 1972, LB 1413, § 23.
- 89-137 Repealed. Laws 1972, LB 1413, § 23.
- 89-138 Repealed. Laws 1972, LB 1413, § 23.
- 89-139 Repealed. Laws 1972, LB 1413, § 23.
- 89-140 Repealed. Laws 1972, LB 1413, § 23.
- 89-141 Repealed. Laws 1972, LB 1413, § 23.
- 89-142 Repealed. Laws 1969, c. 20, § 19.
- 89-143 Repealed. Laws 1969, c. 20, § 19.
- 89-144 Repealed. Laws 1969, c. 20, § 19.
- 89-145 Repealed. Laws 1969, c. 20, § 19.
- 89-146 Repealed. Laws 1969, c. 20, § 19.
- 89-147 Repealed. Laws 1969, c. 20, § 19.
- 89-148 Repealed. Laws 1969, c. 20, § 19.
- 89-149 Repealed. Laws 1969, c. 20, § 19.
- 89-150 Repealed. Laws 1969, c. 20, § 19.
- 89-151 Repealed. Laws 1969, c. 20, § 19.
- 89-152 Repealed. Laws 1969, c. 20, § 19.
- 89-153 Repealed. Laws 1969, c. 20, § 19.
- 89-154 Repealed. Laws 1972, LB 1413, § 23.
- 89-155 Repealed. Laws 1972, LB 1413, § 23.
- 89-156 Repealed. Laws 1972, LB 1413, § 23.
- 89-157 Repealed. Laws 1972, LB 1413, § 23.
- 89-158 Repealed. Laws 1972, LB 1413, § 23.
- 89-159 Repealed. Laws 1972, LB 1413, § 23.
- 89-160 Repealed. Laws 1972, LB 1413, § 23.
- 89-161 Repealed. Laws 1972, LB 1413, § 23.
- 89-162 Repealed. Laws 1972, LB 1413, § 23.
- 89-163 Repealed. Laws 1972, LB 1413, § 23.
- 89-164 Repealed. Laws 1972, LB 1413, § 23.
- 89-165 Repealed. Laws 1972, LB 1413, § 23.
- 89-166 Repealed. Laws 1972, LB 1413, § 23.

**89-167 Repealed. Laws 1972, LB 1413, § 23.**

**89-168 Repealed. Laws 1972, LB 1413, § 23.**

**89-169 Repealed. Laws 1972, LB 1413, § 23.**

**89-170 Repealed. Laws 1945, c. 260, § 5.**

**89-171 Repealed. Laws 1972, LB 1413, § 23.**

**89-172 Repealed. Laws 1972, LB 1413, § 23.**

**89-173 Repealed. Laws 1972, LB 1413, § 23.**

**89-174 Repealed. Laws 1972, LB 1413, § 23.**

**89-175 Repealed. Laws 1972, LB 1413, § 23.**

**89-176 Repealed. Laws 1972, LB 1413, § 23.**

**89-177 Repealed. Laws 1972, LB 1413, § 23.**

**89-178 Repealed. Laws 1972, LB 1413, § 23.**

**89-179 Repealed. Laws 1972, LB 1413, § 23.**

**89-180 Repealed. Laws 1972, LB 1413, § 23.**

**89-181 Repealed. Laws 1972, LB 1413, § 23.**

**89-182 Repealed. Laws 1972, LB 1413, § 23.**

(b) WEIGHTS AND MEASURES ACT

**89-182.01 Act, how cited.**

Sections 89-182.01 to 89-1,103 shall be known and may be cited as the Weights and Measures Act.

**Source:** Laws 1991, LB 356, § 5.

**89-183 Terms, defined.**

For purposes of the Weights and Measures Act:

(1) Actual cost means all the costs associated with the enforcement of the act, including overhead, administration, personnel, and equipment expenses;

(2) Certificate of Conformance means a National Type Evaluation Program Certificate of Conformance issued by (a) the National Institute of Standards and Technology or (b) the National Conference on Weights and Measures establishing that the commercial weighing and measuring device, based on testing, meets the requirements of National Institute of Standards and Technology Handbook 44;

(3) Commercial weighing and measuring device means any weights and measures or weighing and measuring device used or employed in commerce in (a) establishing the size, quantity, extent, area, or measurement of any commodity sold, offered, or submitted for hire, (b) computing any basic charge or payment for services rendered on the basis of weight, measure, or count, or (c) establishing eligibility for any award. A commercial weighing and measuring

device also includes any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects or may affect the accuracy of the device;

(4) Commodity means any service or item or any combination of items forming a distinctive product sold in commerce which is affected by any determination of weight, measure, or count;

(5) Correct, when used in connection with commercial weighing and measuring devices, means conformance to all applicable requirements of the act;

(6) Department means the Department of Agriculture or its authorized agent;

(7) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(8) Kept for sale, in any of its variant forms, means the possession of commodities by a business which sells such commodities;

(9) Modification or modified, when used in connection with commercial weighing and measuring devices, means any change which does not alter the original metrological design characteristics as specified by the device manufacturer or National Type Evaluation Program technical policies;

(10) Net drained weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include free liquid, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(11) Net weight means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part of the commodity include containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, and coupons;

(12) Package means any commodity put up or packaged in any container in advance of sale in units suitable for sale;

(13) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(14) Primary standards means the physical standards of the state which serve as the legal reference from which all other standards are derived;

(15) Sale, in any of its variant forms, means sale, to barter, exchange, offer for sale, or expose for sale, in any of their variant forms, or otherwise supply;

(16) Sale from bulk means sale, in any of its variant forms, of commodities when the quantity is determined at the time of sale;

(17) Secondary standards means the physical standards which are traceable to the primary standards through comparisons using acceptable laboratory procedures. Such standards shall be used in the sale of a commodity or in the verification of weights and measures or weighing and measuring devices for accuracy;

(18) Tare weight means the weight of containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, or items not considered to be part of the commodity deducted from the gross weight to determine the weight of the commodity;

(19) Weighing and measuring device means all instruments and devices of every kind used to determine the quantity of any commodity and includes weights and measures and any appliances and accessories associated with any such instruments and devices except meters, appliances, and accessories which are exempted from the requirements of the act pursuant to subdivision (5) of section 89-187;

(20) Weighing and measuring establishment means a location with one or more commercial weighing and measuring devices or any operation which employs commercial weighing and measuring devices which are mobile; and

(21) Weight, when used in connection with any commodity, means net weight, except when a commodity is sold by drained weight, the term means net drained weight.

**Source:** Laws 1972, LB 1413, § 1; Laws 1991, LB 356, § 6; Laws 1999, LB 473, § 1; Laws 2003, LB 161, § 1.

#### **89-184 Units of measurement; recognition.**

The customary units of measurement in use in the United States and the metric units of measurement are jointly recognized, and either one or both of these systems shall be used in commerce within the state. The definitions of basic units of measurement and the tables of measurement and equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring devices, standards, and transactions in the state.

**Source:** Laws 1972, LB 1413, § 2; Laws 1991, LB 356, § 7.

#### **89-185 Standards; primary and secondary.**

Standards that are traceable to the United States prototype standards supplied by the federal government or approved as being satisfactory by the National Institute of Standards and Technology shall be the primary standards of measurement and shall be maintained so that they are traceable to the National Institute of Standards and Technology. All secondary standards may be prescribed by the director and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

**Source:** Laws 1972, LB 1413, § 3; Laws 1991, LB 356, § 8; Laws 2003, LB 161, § 2.

#### **89-186 Handbooks; adoption by reference.**

(1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 44 entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices as it existed on January 1, 2003, except Section 3.31. Vehicle - Tank meters. UR.2.2. Ticket Printers; Customer Ticket, Section 2.20. Scales, N.3. Minimum Test Weights and Test Loads; and Table 4, are not adopted. In addition to the language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and UR.3.3. of such handbook, any computing device in which a product or grade is offered for sale at more than one unit price may also compute at the lowest possible unit price for such transaction. All prices shall still be displayed or posted on the face of the

dispenser. Such handbook shall govern all commercial and law enforcement weighing and measuring devices in the state;

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it existed on January 1, 2003. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it existed on January 1, 2003. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

(d) The procedures designated in National Institute of Standards and Technology Handbook 133 entitled Checking the Net Contents of Packaged Goods as it existed on January 1, 2003.

(2) Copies of the handbooks adopted by reference in this section shall be filed with the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

(3) Whenever there exists an inconsistency between the provisions of the Weights and Measures Act other than this section and any of the handbooks adopted by reference, the requirements of such provisions of the act shall control.

**Source:** Laws 1972, LB 1413, § 4; Laws 1980, LB 633, § 6; Laws 1991, LB 356, § 9; Laws 1992, LB 366, § 67; Laws 1993, LB 267, § 28; Laws 1999, LB 473, § 2; Laws 2003, LB 161, § 3.

**89-186.01 Commercial weighing and measuring devices; Certificate of Conformance; required; when.**

(1) No person shall sell a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device except when the device is exempted by subsection (6) of this section.

(2) No person shall use a commercial weighing and measuring device within the State of Nebraska unless a Certificate of Conformance has been issued for the device prior to use except when the device is exempted by subsection (3), (4), or (5) of this section.

(3) Commercial weighing and measuring devices in service in Nebraska prior to September 6, 1991, which meet the specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 shall be exempt from meeting the requirements for the Certificate of Conformance.

(4) Commercial weighing and measuring devices removed from service by the owner or on which the department has issued a removal order after September 6, 1991, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the return to service. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(5) Commercial weighing and measuring devices in service prior to September 6, 1991, which are modified after such date shall meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date of the modification. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

(6) Commercial weighing and measuring devices in service prior to September 6, 1991, and sold after such date shall be modified by the seller, unless the buyer and seller agree by contract to exchange the modification responsibility, to meet all specifications, tolerances, and other technical requirements of National Institute of Standards and Technology Handbook 44 adopted by the Legislature on the date sold. Such commercial weighing and measuring devices shall not be required to have been issued a Certificate of Conformance.

**Source:** Laws 1991, LB 356, § 10; Laws 1999, LB 473, § 3.

**89-187 Director of Agriculture; duties; fees; penalty.**

The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of sections 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a data base;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that the fees are due on August 1 and shall be delinquent after such date;

(19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02;

(20) Require all persons who operate a weighing and measuring establishment to, on or before August 1 of each year:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee of four dollars; and

(c) Pay to the department a device inspection fee.

(i) The device inspection fee due August 1, 2003, shall be the amount in column A of subdivision (20)(c)(iii) of this section.

(ii) The device inspection fee due August 1, 2004, and each August 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower the device inspection fees each year to meet the criteria in this subdivision, but the fee shall not be greater than the amount in column B of subdivision (20)(c)(iii) of this section. The same percentage shall be applied to each device category for all device inspection fee increases or decreases. The director shall use the device inspection fees set for the fees due August 1, 2003, as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(A) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Weights and Measures Act; and

GENERAL PROVISIONS

§ 89-187.02

(B) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(iii)

Scales:	A	B
Up through 35 pounds capacity	7.96	14.34
Multiunit Scales	51.00	80.37
Over 35 through 1,000 pounds capacity	15.13	25.35
Over 1,000 through 4,000 pounds capacity	31.87	51.03
Over 4,000 through 50,000 pounds capacity	36.65	58.36
Over 50,000 through 150,000 pounds capacity	39.04	62.03
Over 150,000 pounds capacity	86.87	135.40
Length Measuring Devices:		
Cordage or fabric	16.56	27.55
Pumps:		
Service Station Dispensers -- per measuring element	5.09	9.94
High-capacity service station dispensers over 20 gallons per minute -- per dispensing element	17.52	29.02
Compressed natural gas -- per dispensing element	91.65	142.74
Meters:		
Vehicle tank meters	14.17	23.88
Loading rack meters	31.87	51.03
Liquid petroleum gas meters	40.00	63.50
Liquid fertilizer and herbicide meters	36.65	58.36
Liquid feed meters	36.65	58.36
Cryogenic	53.39	84.04
Mass Flow Metering Systems:		
Mass flow meters (all liquid)	78.26	122.19;
and		

(21) Require persons delinquent under subdivision (20) of this section to pay a penalty of twenty-five percent of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the annual fees due. The department may waive the penalty based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

**Source:** Laws 1972, LB 1413, § 5; Laws 1974, LB 17, § 1; Laws 1979, LB 540, § 1; Laws 1980, LB 633, § 7; Laws 1983, LB 617, § 30; Laws 1984, LB 977, § 1; Laws 1985, LB 460, § 23; Laws 1991, LB 356, § 11; Laws 1992, LB 366, § 68; Laws 1993, LB 370, § 492; Laws 1993, LB 267, § 29; Laws 1999, LB 473, § 4; Laws 2001, LB 541, § 8; Laws 2003, LB 161, § 4; Laws 2005, LB 274, § 284.

**89-187.01 Weighing and measuring establishment; permit required.**

On and after August 1, 1992, a person shall not operate a weighing and measuring establishment in the State of Nebraska unless such person holds a valid permit from the department. If the permitholder has more than one location with commercial weighing and measuring devices, he or she shall have a permit for each location.

**Source:** Laws 1991, LB 356, § 12.

**89-187.02 Permit; application; fee.**

Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. If the applicant is an individual, the application shall include the applicant's social security number. An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

**Source:** Laws 1991, LB 356, § 13; Laws 1993, LB 121, § 566; Laws 1997, LB 752, § 233; Laws 1999, LB 473, § 5; Laws 2003, LB 161, § 5.

**89-187.03 Permit; placed-in-service report or inspection; denial of permit; procedure.**

Before issuing a permit to operate a weighing and measuring establishment, the director shall receive a placed-in-service report from a repairperson, who is registered with the department, or inspect each weighing and measuring device to determine whether the applicant qualifies to hold a permit pursuant to subsection (1) of section 89-187.07 except when the requirements of section 89-187.04 have been met. A placed-in-service report shall be in the form prescribed by the department. A weighing and measuring establishment receiving a placed-in-service report for all of its weighing and measuring devices, passing inspection by the department, or meeting the requirements of section 89-187.04 and otherwise found to qualify to hold a permit pursuant to subsection (1) of section 89-187.07 shall be issued a permit. An applicant who does not receive a permit shall be notified in writing of the grounds for denial, and such applicant shall be afforded the opportunity of a hearing to present evidence that the establishment is qualified to hold a permit pursuant to subsection (1) of section 89-187.07 and should be issued a permit. All such hearings shall be in compliance with the Administrative Procedure Act.

**Source:** Laws 1991, LB 356, § 14.

**Cross References**

Administrative Procedure Act, see section 84-920.

**89-187.04 Permit; placed-in-service report or inspection; when not required.**

An applicant for a permit with commercial weighing and measuring devices registered with the department shall not be required to obtain a placed-in-service report or have such devices pass a new inspection when (1) the director determines that a new inspection is not necessary and (2) the devices have been

properly registered for the previous year and all fees have been paid by the applicant.

**Source:** Laws 1991, LB 356, § 15.

**89-187.05 Permit; posting; changes requiring notice to department.**

(1) A weighing and measuring establishment which has a permanent location for commercial weighing and measuring devices shall have a valid permit posted in a conspicuous place at the establishment, and there shall not be a change in ownership, location, or business name without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, location, or business name.

(2) A weighing and measuring establishment which does not have a permanent location for commercial weighing and measuring devices shall have a copy of a valid permit posted on or about each device and shall not have a change in ownership, business name, or permanent mailing address without the permitholder obtaining a new permit. Any permit for such establishment shall lapse automatically upon a change of ownership, business name, or permanent mailing address.

(3) The holder of any weighing and measuring establishment permit shall notify the department in writing at least thirty days prior to any change requiring a new permit under subsection (1) or (2) of this section. A permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

**Source:** Laws 1991, LB 356, § 16; Laws 1999, LB 473, § 6.

**89-187.06 Permit; governmental agencies; exempt.**

Weighing and measuring devices used by governmental agencies shall be exempt from the requirements of sections 89-187.01 to 89-187.05.

**Source:** Laws 1991, LB 356, § 17.

**89-187.07 Permitholder; duties; disciplinary actions.**

(1) The holder of a permit issued pursuant to the Weights and Measures Act shall comply with the act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist pursuant to section 89-196.01 after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and (c) the director finds that issuing the specified order is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the

permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or the available information if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's establishment closed prior to hearing when: (a) The director determines an immediate danger to the public health, safety, or welfare exists in the permitholder's establishment; and (b) the permitholder receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request in writing a date for a hearing and the director shall consider the interests of the permitholder when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available information if the hearing is waived by the permitholder.

(6) Any establishment for which the permit has been suspended shall close and remain closed until the permit is reinstated. Any establishment for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(7) The director may terminate proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated, a person with a revoked permit may be issued a new permit, or a permitholder may no longer be subject to such an order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(8) Proceedings to suspend or revoke a permit or subject a permitholder to an order of the director described in subsection (2) of this section shall not preclude the department from pursuing other administrative, civil, or criminal actions, such as the stop-use or cease and desist order, an injunction, or a misdemeanor action.

**Source:** Laws 1991, LB 356, § 18; Laws 1999, LB 473, § 7.

#### **89-187.08 Notice or order; service; contents; hearings.**

(1) Any notice or order provided for in the Weights and Measures Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing provided for in the act shall set forth the time and place of the hearing except as provided in subsection (4) of section 89-187.07. A notice of the permitholder's right to such hearing shall include notice that a permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of the director described in subsection (2) of section 89-187.07, or that the permit may be suspended and the permitholder subject to such an order if the director determines such action is more appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended or that the permitholder may also be subject to an order of the director described in subsection (2) of section 89-187.07 if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A permitholder shall be deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least three business days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder shows the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 89-187.07, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

**Source:** Laws 1991, LB 356, § 19; Laws 1999, LB 473, § 8.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**89-188 Director; powers.**

When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) Enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall

first present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees and penalties prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

**Source:** Laws 1972, LB 1413, § 6; Laws 1991, LB 356, § 20; Laws 1999, LB 473, § 9; Laws 2003, LB 161, § 6.

**89-189 Repealed. Laws 1991, LB 356, § 36.**

**89-190 Repealed. Laws 1991, LB 356, § 36.**

**89-191 Repealed. Laws 1991, LB 356, § 36.**

**89-192 Commodities; sale; weight, measure, count.**

Except as otherwise provided by the director, commodities in liquid form shall be sold by liquid measure or by weight and commodities not in liquid form shall be sold only by weight, by measure, or by count, so long as the

method of sale provides the ability for cost comparison and accurate quantity information.

**Source:** Laws 1972, LB 1413, § 10; Laws 1991, LB 356, § 21.

**89-193 Invoice; when required; contents.**

Whenever the quantity is determined for a commodity sold from bulk, except sales from bulk of less than twenty dollars and sales of motor vehicle fuel of less than one hundred dollars, an invoice shall be prepared by the person physically in control of the quantity determination and shall contain the following information:

- (1) The name and address of the buyer and seller involved in the transaction;
- (2) The date delivered;
- (3) The quantity delivered and the quantity upon which the price is based if different from the delivered quantity;
- (4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- (5) The count of individually wrapped packages, if more than one.

**Source:** Laws 1972, LB 1413, § 11; Laws 1982, LB 678, § 1; Laws 1991, LB 356, § 22.

**89-194 Package; label; contents.**

Except as otherwise provided in the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, any package kept for sale or sold shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

- (1) The identity of the commodity in the package unless the same can easily be identified through the wrapper or container;
- (2) The quantity of contents in terms of weight, measure, or count. When items are combined to form a distinctive product, the quantity representation may be in terms of the total quantity of the combined product and a quantity representation need not be made for each item, except that if the label lists the ingredients they shall be in the order of their predominance by weight; and
- (3) The name and place of business of the manufacturer, packer, or distributor in the case of any package kept for sale or sold in any place other than on the premises where packaged.

**Source:** Laws 1972, LB 1413, § 12; Laws 1991, LB 356, § 23.

**89-195 Package; price per pound and total selling price; required.**

In addition to the declarations required by section 89-194, any package sold at retail being one of a lot containing random weights of the same commodity shall bear on the outside of the package a plain and conspicuous declaration of the price per pound and the total selling price.

**Source:** Laws 1972, LB 1413, § 13; Laws 1991, LB 356, § 24.

**89-196 Advertisement with price; declaration of quantity and identity.**

Whenever a commodity is advertised in any manner with the price stated, there shall be closely and conspicuously associated with the price a declaration

of the quantity and the identity of the commodity offered for that price. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of measurement need appear in the advertisement.

**Source:** Laws 1972, LB 1413, § 14; Laws 1991, LB 356, § 25.

**89-196.01 Violations; cease and desist order; enforcement of act.**

(1) Whenever the director has reason to believe that any person has violated any provision of the Weights and Measures Act or any rule or regulation adopted and promulgated pursuant to the act, a hearing notice may be issued requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such hearing notice shall set forth the alleged violation, fix the time and place of the hearing, and specify the action to be considered at such hearing. Hearings shall be conducted as provided for in section 89-187.08. After a hearing, if the director finds such person to be in violation, he or she may enter an order requiring the person to cease and desist from the specific act, practice, or omission.

(2) The director may apply to the county attorney of the county in which the violation occurred or the Attorney General's office to take appropriate action pursuant to sections 89-198 and 89-1,101 without first entering an order as set forth in subsection (1) of this section when there exists an endangerment to the public health, safety, or welfare.

**Source:** Laws 1991, LB 356, § 26; Laws 1999, LB 473, § 10.

**89-197 Unlawful acts.**

It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

- (8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;
- (9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;
- (10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;
- (11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;
- (12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;
- (13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;
- (14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;
- (15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;
- (16) Fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;
- (17) Refuse to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act; or
- (18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

**Source:** Laws 1972, LB 1413, § 15; Laws 1991, LB 356, § 27; Laws 1993, LB 267, § 30.

**89-198 Restraining order or injunction; when.**

(1) In order to obtain compliance with the Weights and Measures Act, the director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which any violation of the act or the rules and regulations has

occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, section 89-1,101, or both. Before the director reports a violation, an opportunity shall be given to such person to present his or her views to the director except when there exists an endangerment to the public health, safety, or welfare.

**Source:** Laws 1972, LB 1413, § 16; Laws 1991, LB 356, § 28; Laws 1993, LB 267, § 31.

**89-199 Weighing and measuring devices; presumption.**

Whenever weighing and measuring devices exist in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weighing and measuring devices are commercial weighing and measuring devices.

**Source:** Laws 1972, LB 1413, § 17; Laws 1991, LB 356, § 29.

**89-1,100 Weights and Measures Administrative Fund; created; use; investment; fees, penalties, and other money; lien.**

The director shall collect registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby created. All fees, penalties, and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the 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. The registration, permit, laboratory, test, and inspection fees, penalties, and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees, penalties, and reimbursements are paid. The director may sue for such fees, penalties, and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

**Source:** Laws 1972, LB 1413, § 18; Laws 1974, LB 17, § 2; Laws 1986, LB 258, § 45; Laws 1991, LB 356, § 30; Laws 1994, LB 1066, § 142; Laws 2001, LB 541, § 9; Laws 2003, LB 161, § 7.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**89-1,101 Violations; penalty.**

Any person who violates any provision of the Weights and Measures Act or any order of the department after such order has become final or upon termination of any review proceeding, when the order has been sustained by a

court of law, shall be guilty of a Class III misdemeanor. Upon a subsequent conviction thereof, he or she shall be guilty of a Class I misdemeanor.

**Source:** Laws 1972, LB 1413, § 19; Laws 1974, LB 17, § 3; Laws 1977, LB 39, § 338; Laws 1987, LB 201, § 6; Laws 1991, LB 356, § 31.

**89-1,101.01 Violations; costs of enforcement.**

All actual costs associated with seizing any weighing and measuring device or commodity which is in violation of the Weights and Measures Act or the rules and regulations adopted and promulgated pursuant to the act, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles shall be incurred by the owner of such commodity or weighing and measuring device. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions or in enforcing the act. The department shall be reimbursed by the owner for the actual cost incurred by the department in seizing any weighing and measuring device or commodity, issuing and enforcing any stop-use, hold, or removal order for commercial weighing and measuring devices, issuing and enforcing any stop-sale, hold, or removal order for commodities, and stopping commercial vehicles.

**Source:** Laws 1991, LB 356, § 32.

**89-1,101.02 Records.**

Every person who keeps, sells, or uses a commercial weighing and measuring device shall keep and make available for examination by the department for a period of three years at a minimum the following records:

- (1) All invoices generated from a sale from bulk;
- (2) Bills of lading, invoices, or other pertinent data relating to commodities bought or sold; and
- (3) Any other information that would verify accurate quantity determinations by weight, measure, or count.

**Source:** Laws 1991, LB 356, § 33.

**89-1,102 Repealed. Laws 1991, LB 356, § 36.**

**89-1,102.01 Division of Weights and Measures; established.**

There is hereby established a Division of Weights and Measures under the control of the department which shall be responsible for the enforcement of the Weights and Measures Act.

**Source:** Laws 1991, LB 356, § 35.

**89-1,103 Act, how construed.**

The Weights and Measures Act shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which have enacted corresponding provisions.

**Source:** Laws 1972, LB 1413, § 21; Laws 1991, LB 356, § 34.

## (c) GRAIN MOISTURE MEASURING DEVICES

**89-1,104 Grain moisture measuring devices; inspections; fee.**

The Public Service Commission, grain warehouse department, shall enforce the provisions of sections 89-1,104 to 89-1,108. It shall make or cause to be made all inspections and may establish tolerances and specifications for grain moisture measuring devices similar to the tolerances and specifications recommended or used by the grain branch of the United States Department of Agriculture, which shall have for their object the establishment of more accurate grain moisture measuring in the State of Nebraska. The Public Service Commission may charge a fee to cover the cost of inspecting grain moisture measuring devices.

**Source:** Laws 1978, LB 636, § 1.

**89-1,104.01 Moisture Testing Examination Fund; created; use; investment; State Treasurer; duties.**

The fees charged pursuant to section 89-1,104 shall be remitted by the Public Service Commission to the State Treasurer. The State Treasurer shall credit such fees to the Moisture Testing Examination Fund, which fund is hereby created. The fund shall be appropriated to the Public Service Commission to be used to cover the costs associated with the grain moisture measuring devices program. The money in such fund may be used at any time by the commission. Any money in the 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.

**Source:** Laws 1992, LB 366, § 66; Laws 1994, LB 1066, § 143; Laws 2003, LB 735, § 16.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**89-1,105 Grain moisture measuring devices; make comparative tests.**

The supervisor of the grain warehouse department of the Public Service Commission, or his or her inspectors, shall inspect, make comparative tests of, and ascertain if correct, every grain moisture measuring device used or employed in this state by any proprietor or agent, lessee, or employee thereof in proving or ascertaining the moisture and test weight of grain offered for storage or sale, sold, or purchased or in the process of being purchased. Such inspector shall use as a standard for making such comparative tests a grain moisture measuring device meeting the tolerances and specifications established pursuant to section 89-1,104.

**Source:** Laws 1978, LB 636, § 2; Laws 2005, LB 52, § 7.

**89-1,106 Grain moisture measuring devices; comparative tests; sealing or marking.**

Whenever the supervisor of the grain warehouse department of the Public Service Commission, or his or her inspectors, compares grain moisture tests of the device being tested with the standard grain moisture measuring device and finds that they correspond or causes them to correspond with the standard, the supervisor, or his or her inspectors, shall seal or mark such grain moisture

measuring testing device with appropriate seals or works. Any such grain moisture measuring testing device which upon such inspection shall be found to be defective shall be sealed or marked with an appropriate seal indicating such device to be defective and the owner or user of such device shall be notified in writing on the date of such inspection of such defective condition by the supervisor of the grain warehouse department, or his or her inspectors.

**Source:** Laws 1978, LB 636, § 3.

**89-1,107 Grain moisture measuring devices; use in buying and selling grain; approval; violations; penalty; exception.**

Commencing September 1, 1979, any person who, by himself or by his agent or as agent of another person, shall use in buying or selling grain any grain moisture measuring device which has not been tested and approved for use by the supervisor of the grain warehouse department of the Public Service Commission or his or her inspectors shall be guilty of a Class IIIA misdemeanor, except that the use of a newly purchased grain moisture measuring device in the buying or selling of grain prior to regular inspection and approval shall not be considered a misdemeanor if the user of such device has given notice to the supervisor of the grain warehouse department of the Public Service Commission of the purchase and intended use of such new device. Such notice shall be given by either certified or registered mail not later than ten days prior to the date of such intended use.

**Source:** Laws 1978, LB 636, § 4.

**89-1,108 Grain moisture measuring devices; sections; violations; penalty.**

A person who violates sections 89-1,104 to 89-1,108 shall be guilty of a Class IIIA misdemeanor and, if a public employee, such person shall be subject to dismissal.

**Source:** Laws 1978, LB 636, § 5.

**ARTICLE 2**

**NEBRASKA SUGAR BEET WEIGHING AND TESTING ACT**

Section

- 89-201. Repealed. Laws 1976, LB 535, § 1.
- 89-202. Repealed. Laws 1976, LB 535, § 1.
- 89-203. Repealed. Laws 1976, LB 535, § 1.
- 89-204. Repealed. Laws 1976, LB 535, § 1.
- 89-205. Repealed. Laws 1976, LB 535, § 1.
- 89-206. Repealed. Laws 1976, LB 535, § 1.
- 89-207. Repealed. Laws 1976, LB 535, § 1.
- 89-208. Repealed. Laws 1976, LB 535, § 1.
- 89-209. Repealed. Laws 1976, LB 535, § 1.

**89-201 Repealed. Laws 1976, LB 535, § 1.**

**89-202 Repealed. Laws 1976, LB 535, § 1.**

**89-203 Repealed. Laws 1976, LB 535, § 1.**

**89-204 Repealed. Laws 1976, LB 535, § 1.**

**89-205 Repealed. Laws 1976, LB 535, § 1.**

§ 89-206

**WEIGHTS AND MEASURES**

**89-206 Repealed. Laws 1976, LB 535, § 1.**

**89-207 Repealed. Laws 1976, LB 535, § 1.**

**89-208 Repealed. Laws 1976, LB 535, § 1.**

**89-209 Repealed. Laws 1976, LB 535, § 1.**

## CHAPTER 90 SPECIAL ACTS

### Article.

1. State, General Provisions. 90-101 to 90-120.
2. Specific Conveyances. 90-201 to 90-271.
3. Capitol Environs. 90-301 to 90-309.
4. Specific Projects. 90-401 to 90-405.
5. Appropriations. 90-501 to 90-534.

### ARTICLE 1

#### STATE, GENERAL PROVISIONS

### Section

- 90-101. State name.
- 90-102. State banner; design; legend described; official state flag; when and where displayed.
- 90-103. State banner; use as advertisement or trademark, prohibited.
- 90-104. State banner; violations; penalty.
- 90-105. State symbol and slogan; adoption.
- 90-106. State symbol and slogan; use by state agencies; imprint on state stationery.
- 90-107. State bird; western meadowlark.
- 90-108. State gem; blue agate.
- 90-109. State fossil; mammoth.
- 90-110. State rock; prairie agate.
- 90-111. State song; Beautiful Nebraska.
- 90-112. State grass; little blue stem.
- 90-113. State tree; cottonwood.
- 90-114. State insect; honeybee.
- 90-115. Nebraska Educational Telecommunications Building in Lincoln; named the Terry M. Carpenter Educational Telecommunications Building.
- 90-116. State soil; Holdrege series.
- 90-117. State mammal; whitetail deer.
- 90-118. Repealed. Laws 1999, LB 813, § 62.
- 90-119. Governor; designate official state items.
- 90-120. Repealed. Laws 2008, LB 195, § 1.

#### **90-101 State name.**

The State of Nebraska shall hereafter, in a popular sense, be known and referred to as the Cornhusker State.

**Source:** Laws 1945, c. 256, § 1, p. 796; R.R.S.1943, § 84-713.01.

#### **90-102 State banner; design; legend described; official state flag; when and where displayed.**

The banner of the State of Nebraska shall consist of a reproduction of the Great Seal of the State, charged on the center in gold and silver on a field of national blue. The banner shall be the official state flag of the State of Nebraska and may be displayed on such occasions, at such times, and under such conditions as the flag of the United States of America. The banner shall be displayed on or near the State Capitol, the Governor's Mansion, all court-houses, city or village halls, schoolhouses, and other public administrative

buildings in this state under or to the left of the flag of the United States of America.

**Source:** Laws 1925, c. 151, § 1, p. 387; C.S.1929, § 84-720; R.S.1943, § 84-714; Laws 1963, c. 305, § 2, p. 902; Laws 1965, c. 570, § 1, p. 1859; R.R.S.1943, § 84-714.

Cross References

Desecration of the flag, see section 28-928.

Great Seal of the State, see section 84-501.

Placing of banner on top of State Capitol Building when Legislature is in session, see section 50-116.

**90-103 State banner; use as advertisement or trademark, prohibited.**

The state banner, provided for in section 90-102, shall never be used as a business advertisement or trademark, either in its entirety or in a composite; and any insult to such banner is forbidden.

**Source:** Laws 1925, c. 151, § 3, p. 388; C.S.1929, § 84-722; R.S.1943, § 84-715.

**90-104 State banner; violations; penalty.**

Any person, firm or corporation who shall violate any of the provisions of section 90-103, shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1925, c. 151, § 5, p. 388; C.S.1929, § 84-724; R.S.1943, § 84-716; Laws 1977, LB 39, § 339.

**90-105 State symbol and slogan; adoption.**

The following is hereby adopted as the official symbol and slogan for the State of Nebraska:



**Source:** Laws 1963, c. 533, § 1, p. 1678; R.R.S.1943, § 84-716.01.

**90-106 State symbol and slogan; use by state agencies; imprint on state stationery.**

The official slogan and official symbol, either separately or in conjunction with each other, shall be used by all agencies of the state whenever appropriate in the promotion of the state. They shall be imprinted on all state letterheads and the reverse side of all mailing envelopes as new supplies are acquired.

**Source:** Laws 1963, c. 533, § 3, p. 1678; R.R.S.1943, § 84-716.03.

**90-107 State bird; western meadowlark.**

The western meadowlark is hereby declared the state bird of Nebraska.

**Source:** Laws 1929, c. 139, § 1, p. 495; C.S.1929, § 84-725; R.S.1943, § 84-717.

**90-108 State gem; blue agate.**

The chalcedony stone, known as blue agate, is hereby declared the state gem stone of Nebraska.

**Source:** Laws 1967, c. 608, § 1, p. 2057; R.R.S.1943, § 84-725.

**90-109 State fossil; mammoth.**

The mammoth is hereby designated as the official state fossil.

**Source:** Laws 1967, c. 609, § 1, p. 2057; R.R.S.1943, § 84-726.

**90-110 State rock; prairie agate.**

The chalcedony stone, commonly known as prairie agate, is hereby declared the state rock of Nebraska.

**Source:** Laws 1967, c. 610, § 1, p. 2058; R.R.S.1943, § 84-727.

**90-111 State song; Beautiful Nebraska.**

The song Beautiful Nebraska with words by Jim Fras and Guy G. Miller and music by Jim Fras is hereby adopted as the Nebraska state song.

**Source:** Laws 1967, c. 613, § 1, p. 2060; R.R.S.1943, § 84-728; Laws 2008, LB728, § 1.  
Effective date July 18, 2008.

**90-112 State grass; little blue stem.**

Little blue stem, known as andropogon scoparius, is hereby declared the official state grass of Nebraska.

**Source:** Laws 1969, c. 829, § 1, p. 3151; R.R.S.1943, § 84-729.

**90-113 State tree; cottonwood.**

The cottonwood is hereby declared the state tree of Nebraska.

**Source:** Laws 1972, LB 1089, § 1; C.S.Supp.,1974, § 84-730.

**90-114 State insect; honeybee.**

The honeybee (*Apis mellifera*) is hereby adopted as the official state insect.

**Source:** Laws 1975, LB 15, § 1.

**90-115 Nebraska Educational Telecommunications Building in Lincoln; named the Terry M. Carpenter Educational Telecommunications Building.**

The Nebraska Educational Telecommunications Building in Lincoln, Nebraska shall be named and known as the Terry M. Carpenter Educational Telecommunications Building.

**Source:** Laws 1978, LB 955, § 2.

**90-116 State soil; Holdrege series.**

Soils of the Holdrege series, classified as Typic Argiustolls, fine-silty, mixed, mesic, is hereby adopted as the official state soil of Nebraska.

**Source:** Laws 1979, LB 475, § 1.

**90-117 State mammal; whitetail deer.**

The whitetail deer (*Odocoileus virginianus*) is hereby adopted as the official state mammal.

**Source:** Laws 1981, LB 27, § 1.

**90-118 Repealed. Laws 1999, LB 813, § 62.**

**90-119 Governor; designate official state items.**

The Governor may designate official state items, including animals, plants, minerals, and other things. Legislative approval of any such designation is not required. Any designation made on or prior to September 13, 1997, is not affected by this section.

**Source:** Laws 1997, LB 106, § 1.

**90-120 Repealed. Laws 2008, LB 195, § 1.**

**ARTICLE 2**

**SPECIFIC CONVEYANCES**

- |         |   |
|---------|---|
| Section |   |
| 90-201. | Department of Health and Human Services; convey property to University of Nebraska at Kearney; revenue; restriction.    |
| 90-202. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-203. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-204. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-205. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-206. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-207. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-208. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-209. | Game and Parks Commission; acquire described property; powers and duties.   |
| 90-210. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-211. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-212. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-213. | Game and Parks Commission; Cottonmill State Recreation Area; convey to city of Kearney and county of Buffalo; reverter. |
| 90-214. | Game and Parks Commission; Stolley State Recreation Area; convey to city of Grand Island and county of Hall; reverter.  |
| 90-215. | Game and Parks Commission; Arnold State Recreation Area; convey to county of Custer; reverter.                          |
| 90-216. | Game and Parks Commission; Long Bridge State Special Use Area; convey to county of Merrick; reverter.                   |
| 90-217. | Repealed. Laws 1987, LB 32, § 3.  |
| 90-218. | Governor; convey state's reversionary interest in described property.   |

SPECIFIC CONVEYANCES

§ 90-201

- Section
- 90-219. Department of Correctional Services; lease agreement with city of Kearney; term.
- 90-220. Game and Parks Commission; acceptance of certain Pauline M. Armstrong real estate; terms and conditions.
- 90-221. Repealed. Laws 1996, LB 1044, § 985.
- 90-222. Repealed. Laws 1996, LB 1044, § 985.
- 90-223. Governor; convey easement and property to city of Lincoln.
- 90-224. Adjutant General; convey easement to the city of York.
- 90-225. Commissioner of Labor; convey property to city of Omaha.
- 90-226. Repealed. Laws 1987, LB 32, § 3.
- 90-227. Adjutant General; convey easement to city of Lexington.
- 90-228. Department of Correctional Services; convey described property.
- 90-229. Repealed. Laws 1996, LB 1044, § 985.
- 90-230. Repealed. Laws 1996, LB 1044, § 985.
- 90-231. Repealed. Laws 1996, LB 1044, § 985.
- 90-232. Repealed. Laws 1996, LB 1044, § 985.
- 90-233. Repealed. Laws 1996, LB 1044, § 985.
- 90-234. Repealed. Laws 1996, LB 1044, § 985.
- 90-235. Repealed. Laws 1996, LB 1044, § 985.
- 90-236. Repealed. Laws 1996, LB 1044, § 985.
- 90-237. Repealed. Laws 1996, LB 1044, § 985.
- 90-238. Department of Roads; acquire described property.
- 90-239. Governor; convey property to city of Lincoln.
- 90-240. State Board of Agriculture; convey easement.
- 90-241. Adjutant General; convey described property.
- 90-242. Department of Correctional Services; convey described property.
- 90-243. Department of Correctional Services; convey described property.
- 90-244. Department of Administrative Services; sell or lease State Office Building in Omaha; distribution of proceeds.
- 90-245. Adjutant General; convey described easement.
- 90-246. Department of Correctional Services; convey described property.
- 90-247. Department of Correctional Services; sell described property.
- 90-248. Department of Correctional Services; sale of land; State Treasurer's Land Sales Distributive Fund; created; use; investment.
- 90-249. Repealed. Laws 1996, LB 1044, § 985.
- 90-250. Repealed. Laws 1996, LB 1044, § 985.
- 90-251. State Department of Education; sell described property; proceeds.
- 90-252. Department of Correctional Services; convey described property.
- 90-253. Department of Economic Development; convey described property; proceeds.
- 90-254. Department of Correctional Services; convey described property.
- 90-255. Department of Correctional Services; donation to county; damages paid by county.
- 90-256. Repealed. Laws 1996, LB 1044, § 985.
- 90-257. Repealed. Laws 1996, LB 1044, § 985.
- 90-258. Repealed. Laws 1996, LB 1044, § 985.
- 90-259. Repealed. Laws 1996, LB 1044, § 985.
- 90-260. Game and Parks Commission; convey described property.
- 90-261. Repealed. Laws 2000, LB 885, § 3.
- 90-262. Repealed. Laws 2000, LB 885, § 3.
- 90-263. Repealed. Laws 2000, LB 885, § 3.
- 90-264. Adjutant General; convey easement to the city of Wahoo.
- 90-265. Game and Parks Commission; convey described property.
- 90-266. Buffalo County; grant permanent easement.
- 90-267. Nebraska Army National Guard complex; sale of property authorized.
- 90-268. Proceeds; disposition.
- 90-269. Military Department Joint Operations Center project; transfer of funds.
- 90-270. Joint Operations Center Capital Construction Fund; created; use; investment.
- 90-271. Ferguson House; sale prohibited.

**90-201 Department of Health and Human Services; convey property to University of Nebraska at Kearney; revenue; restriction.**

The Department of Health and Human Services is authorized and directed to convey to the University of Nebraska at Kearney for academic and developmental purposes at the termination of the current lease of the real estate on February 28, 2006, the following described real estate located in Buffalo County, Nebraska:

A tract of land being part of Government Lot 1, part of Government Lot 2, part of Government Lot 3, part of Government Lot 4, part of the South half of the Northwest Quarter, part of the Northwest Quarter of the Southwest Quarter, part of the South half of the Northeast Quarter and part of the North half of the Southeast Quarter of Section 4, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Southeast Corner of the Northeast Quarter of said Section 4 and assuming the South line of said Northeast Quarter as bearing N 89° 59' 10" W and all bearings contained herein are relative thereto; thence N 89° 59' 10" W and on the South line of the Northeast Quarter of said section a distance of 660.0 feet to the ACTUAL PLACE OF BEGINNING; thence S 01° 37' 34" W a distance of 18.65 feet to a point on the North property line of an existing road; thence N 89° 29' 57" W and on the aforesaid North property line a distance of 3372.3 feet to the point of curvature; thence on a 1332.72 foot radius curve to the left forming a central angle of 13° 10' a distance of 306.26 feet to the point of tangency; thence tangent S 77° 20' 03" W a distance of 224.85 feet to the point of curvature; thence on a 687.31 foot radius curve to the right forming a central angle of 07° 31' 16" a distance of 90.32 feet; thence leaving said curve N 01° 39' E a distance of 85.39 feet to a point on the South line of the Northwest Quarter of said Section 4; thence N 01° 31' 22" E a distance of 310.2 feet to the Northeast corner of a tract of land known as Reservation No. 2 as located in State Application Resurvey No. 154 and filed in the Buffalo County Surveyors Office; thence N 89° 57' 11" W and on the North line of said Reservation No. 2 tract a distance of 243.86 feet; thence N 01° 43' 30" W a distance of 1501.2 feet; thence S 85° 38' E a distance of 681.66 feet to the Southeast corner of a tract of land known as Reservation No. 1, thence N 21° 02' W and on the easterly line of said Reservation No. 1 a distance of 535.07 feet; thence S 80° 22' 31" E a distance of 365.02 feet; thence S 86° 03' 12" E a distance of 351.11 feet; thence N 86° 44' 38" E a distance of 359.33 feet; thence N 79° 19' 21" E a distance of 443.41 feet; thence N 77° 14' 05" E a distance of 660.05 feet; thence N 83° 05' E a distance of 195.54 feet; thence N 89° 51' 32" E a distance of 1503.54 feet to a point, said point being 660.0 feet West of the East line of said Section 4; thence S 01° 37' 34" W a distance of 2450.53 feet to the place of beginning. Containing 221.3 acres, more or less.

A tract of land being part of the North half of the South half of Section 4, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast corner of the Southeast Quarter of Section 4 and assuming the North line of said Southeast Quarter as bearing N 89° 59' 10" W and all bearings contained herein are relative thereto; thence N 89° 59' 10" W and on the North line of said Southeast Quarter a distance of 660.0 feet; thence S 01° 37' 34" W a distance of 84.67 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the South property line of an existing road; thence N 89° 29' 57" W and on the aforesaid South property line a distance of 3369.9 feet to the point of curvature; thence on a 1266.72 foot radius curve to the left forming a central angle of 13° 10' a distance of 291.1 feet to the point of tangency; thence

tangent S 77° 20' 03" W a distance of 224.85 feet to the point of curvature; thence on a 753.31 foot radius curve to the right forming a central angle of 12° 40' 30" a distance of 166.65 feet to the point of tangency; thence tangent N 89° 59' 27" W a distance of 126.4 feet to the point of curvature; thence on a 1673.61 foot radius curve to the right forming a central angle of 05° 35' a distance of 163.09 feet to the point of tangency; thence tangent N 84° 24' 27" W a distance of 158.4 feet to the point of curvature; thence on a 1232.18 foot radius curve to the right forming a central angle of 06° 21' 40" a distance of 136.8 feet to the point of intersection of the West line of the Southwest Quarter of said Section 4; thence leaving said curve S 01° 41' W and on the West line of said Southwest Quarter a distance of 501.45 feet to a point on the North property line of the Union Pacific Railroad; thence N 85° 39' 06" E and on the aforesaid North property line a distance of 188.78 feet to the point of curvature; thence on a 11017.1 foot radius curve to the left forming a central angle of 01° 29' a distance of 285.22 feet to the point of tangency; thence tangent N 84° 10' 06" E a distance of 4185.03 feet to a point, said point being 660.0 feet West of the East line of said Section 4; thence N 01° 37' 34" E a distance of 61.84 feet to the place of beginning. Containing 31.8 acres, more or less, of which 0.4 acres, more or less, are presently being used for road purposes on the West side.

If the University of Nebraska at Kearney sells any part of the real estate before development of the real estate, the funds received shall be remitted to the Department of Health and Human Services. Any continuing agriculture-related net revenue from the real estate conveyed to the University of Nebraska at Kearney under this section shall be remitted to the Department of Health and Human Services for a period of ten years after conveyance.

**Source:** Laws 2005, LB 668, § 1.

**90-202 Repealed. Laws 1987, LB 32, § 3.**

**90-203 Repealed. Laws 1987, LB 32, § 3.**

**90-204 Repealed. Laws 1987, LB 32, § 3.**

**90-205 Repealed. Laws 1987, LB 32, § 3.**

**90-206 Repealed. Laws 1987, LB 32, § 3.**

**90-207 Repealed. Laws 1987, LB 32, § 3.**

**90-208 Repealed. Laws 1987, LB 32, § 3.**

**90-209 Game and Parks Commission; acquire described property; powers and duties.**

The Game and Parks Commission is hereby authorized to acquire, using funds received from the federal Land and Water Conservation Fund, other applicable federal-aid funds, and donations or bequests, the following described property, all in Sarpy County:

The northeast quarter and the northwest quarter of the northwest quarter of section 19, township 14 north, range 14 east, the north half and the north half of the south half of section 20, township 14 north, range 14 east, and the southwest quarter of the southwest quarter and the northeast quarter of the southwest quarter of section 18, township 14 north, range 14 east.

The Game and Parks Commission may enter into agreements or leases with political subdivisions or nonprofit corporations for the operation and development of the property for recreational and educational purposes, but the commission shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

**Source:** Laws 1975, LB 507, § 1.

**90-210 Repealed. Laws 1987, LB 32, § 3.**

**90-211 Repealed. Laws 1987, LB 32, § 3.**

**90-212 Repealed. Laws 1987, LB 32, § 3.**

**90-213 Game and Parks Commission; Cottonmill State Recreation Area; convey to city of Kearney and county of Buffalo; reverter.**

The Game and Parks Commission is authorized and directed to convey to the city of Kearney and to the county of Buffalo, such city and county acting jointly, or to either the city of Kearney or to the county of Buffalo, acting separately, for public park purposes the following described real estate now known as Cottonmill State Recreation Area, situated in the county of Buffalo, in the State of Nebraska, to wit: Part of the south half of section 32, township 9, range 16, west of the sixth principal meridian, more fully described as follows: Beginning at the southeast corner of section 32, and running thence north along the east line of section 32, a distance of six hundred eighty-two feet, to the point of beginning; running thence west sixty-two degrees ten minutes south for a distance of seven hundred twenty-seven and four-tenths feet, thence bearing right seventy-eight degrees forty-one minutes for a distance of one thousand one hundred ninety-two feet, thence bearing left eighty-three degrees fifty minutes for a distance of three hundred eighty-eight and one-tenth feet, thence bearing right eighty-two degrees thirty-five minutes for a distance of five hundred eighty-two and one-tenth feet, thence bearing right nine degrees forty-one minutes for a distance of three hundred two and seven-tenths feet, thence bearing left twenty-five degrees forty-seven minutes for a distance of four hundred eighty-six and one-tenth feet, thence bearing right thirty-three degrees thirty-nine minutes for a distance of six hundred seventy-eight and nine-tenths feet, to a point on the east and west half section line of section 32, thence east along the east and west half section line to the northeast corner of the southeast quarter of section 32, thence south along the east line of section 32, to the point of beginning; subject, however, to the rights of the Kearney Water and Electric Power Company, in and to and over and across the premises described for canal and flowage purposes, more particularly set forth in a decree of the district court of Buffalo County, Nebraska, entered on March 22, 1918, a case therein indexed as the Kearney Water and Electric Power Company, plaintiff, vs. Zada M. Lancaster, et al, defendants; *Provided*, that should the city of Kearney and the county of Buffalo, such city and county acting jointly or separately, cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

**Source:** Laws 1973, LB 163, § 1; C.S.Supp.,1974, § 81-815.46.

**90-214 Game and Parks Commission; Stolley State Recreation Area; convey to city of Grand Island and county of Hall; reverter.**

The Game and Parks Commission is authorized and directed to convey to the city of Grand Island and to the county of Hall, such city and county acting jointly, or to either the city of Grand Island or the county of Hall, acting separately, for public park purposes the following described real estate now known as Stolley State Recreation Area situated in the county of Hall, in the State of Nebraska, to wit: Commencing at a point on the north line of section 28, township 11 north, range 9 west of the sixth principal meridian, five hundred forty-four and seven-tenths feet east of the northwest corner of said section 28, and running thence west along the north line of said section 28 and section 29, in the same town and range, one thousand eight hundred seventy and seven-tenths feet; thence south one thousand twelve and five-tenths feet; thence east, parallel with the north line of said sections 28 and 29, one thousand eight hundred thirty-four and five-tenths feet; thence north nine hundred twelve and three-tenths feet to a stake, thence northeasterly sixty-three and two-tenths feet to a stake; thence north forty-three and eight-tenths feet to the place of beginning, and containing forty-two and eighty-three hundredths acres, a little more or less; *Provided*, that should the city of Grand Island and the county of Hall, such city and county acting jointly or separately, cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

**Source:** Laws 1973, LB 163, § 2; C.S.Supp.,1974, § 81-815.47.

**90-215 Game and Parks Commission; Arnold State Recreation Area; convey to county of Custer; revert.**

The Game and Parks Commission is authorized to convey to the county of Custer for public park purposes the following described real estate now known as Arnold State Recreation Area, situated in the county of Custer, in the State of Nebraska, to wit: A tract of land in the northwest quarter of the southeast quarter section 28, township 17 north, range 25 west of the sixth principal meridian, described as follows: Beginning at the northeast corner of said northwest quarter of the southeast quarter running thence west six hundred sixty feet, thence south three hundred thirty feet, thence south forty-five degrees east to a point three hundred thirty feet north of the southeast corner of said northwest quarter of the southeast quarter, thence north nine hundred ninety feet to the place of beginning, and containing ten acres more or less; and a tract of land in the northeast quarter of the southeast quarter section 28, township 17 north, range 25 west of the sixth principal meridian, described as follows: Beginning at the northwest corner of said northeast quarter of the southeast quarter running thence east six hundred sixty feet more or less to the center of the channel of the South Loup River, thence in a southerly and easterly direction along the center of the channel of said river to its intersection with the east line of said northeast quarter of the southeast quarter, said point of intersection being five hundred twenty-eight feet more or less south of the northeast corner of said northeast quarter of the southeast quarter, thence south along said east line six hundred thirty feet, thence west one thousand three hundred twenty feet more or less to the west line of said northeast quarter of the southeast quarter, thence north along said west line one thousand one hundred fifty-eight feet to the place of beginning, and containing thirty acres more or less; *Provided*, that should the county of Custer cease to operate the

lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

**Source:** Laws 1973, LB 163, § 3; C.S.Supp.,1974, § 81-815.48.

**90-216 Game and Parks Commission; Long Bridge State Special Use Area; convey to county of Merrick; reverter.**

The Game and Parks Commission is authorized and directed to convey to the county of Merrick for public park purposes the following described real estate now known as Long Bridge State Special Use Area, situated in the county of Merrick, in the State of Nebraska, to wit: A part of the east one thousand eight hundred thirty-nine and forty-two hundredths feet of fractional section 30 in township 12 north, range 7 west of the sixth principal meridian, described as follows: Beginning at the northeast corner of said section 30, thence south forty-four degrees fifty minutes west one hundred seventy-seven and nine-tenths feet, thence south twenty-five degrees thirty-three minutes west one hundred sixty-nine and five-tenths feet, thence thirty-two degrees twenty minutes west one hundred ninety-three and zero-tenths feet, thence south forty-two degrees six minutes west one hundred ninety-three and three-tenths feet, thence south thirty-two degrees thirty-two minutes west three hundred eighteen and two-tenths feet, thence south fifty-nine degrees nine minutes west four hundred fifty-eight and five-tenths feet, thence south thirty-two degrees twelve minutes west five hundred forty-three and zero-tenths feet, thence south forty degrees thirty-eight minutes west two hundred eleven and three-tenths feet, thence south fifty-one degrees zero minutes west three hundred eleven and zero-tenths feet, thence south forty degrees twenty-one minutes west two hundred sixty-nine and five-tenths feet to the west line of said tract, thence south one thousand one hundred ninety feet to the original south bank of Grand Island according to the original government survey, thence northeasterly along said original south bank of Grand Island according to the original government survey to the location of the original meander corner on the east line of said section 30, thence north one hundred twenty-one and four-tenths feet to the place of beginning, together with all accretion land in connection therewith and pertaining thereto, containing one hundred forty-six acres, more or less; *Provided*, that should the county of Merrick cease to operate the lands conveyed as a public park and recreation area, title to said lands shall revert to the Game and Parks Commission.

**Source:** Laws 1973, LB 163, § 4; C.S.Supp.,1974, § 81-815.49.

**90-217 Repealed. Laws 1987, LB 32, § 3.**

**90-218 Governor; convey state's reversionary interest in described property.**

The Governor is hereby authorized to enter into an agreement to sell and convey the state's reversionary interest in the public way legally described as follows: Calvert Street from the east line of 13th Street to the west line of 14th Street, abutted by block 23, Fairmont Addition, and abutted by the northeast quarter of section 2, township 9 North, range 6 East, in the city of Lincoln, Lancaster County, Nebraska.

**Source:** Laws 1976, LB 999, § 1.

**90-219 Department of Correctional Services; lease agreement with city of Kearney; term.**

The Legislature hereby approves and recommends to the Governor that the Department of Correctional Services enter into a lease agreement with the city of Kearney relating to lands owned by the department at a fixed annual cash rental for a term of not more than ninety-nine years. Such land is described as follows:

The northeast quarter of section 33, township 9 north, range 16 west of the sixth principal meridian in Buffalo County, Nebraska, more particularly described as follows: Commencing at a point two hundred fifty-five feet south of the northeast corner of section 33, thence west three hundred forty feet; thence south three hundred feet parallel to the east section line; thence east three hundred forty feet; thence north three hundred feet along the east section line to the point of beginning, containing two and thirty-four hundredths acres, more or less.

**Source:** Laws 1977, LB 80, § 1.

**90-220 Game and Parks Commission; acceptance of certain Pauline M. Armstrong real estate; terms and conditions.**

(1) The Game and Parks Commission shall enter into an agreement to accept as a gift to the State of Nebraska from Pauline M. Armstrong, personally, from the trustee of the Pauline M. Armstrong Trust, or from the trustee of the Henry J. and Pauline M. Armstrong Charitable Trust, the following described real estate: The east half of the northwest quarter and the northeast quarter of section 26, township 12 north, range 8 east of the 6th principal meridian, Lancaster County, Nebraska.

(2) In consideration of such conveyance the commission agrees, to the extent that such terms and conditions are feasible, to the following terms and conditions:

(a) A portion of such conveyance shall be used as a game preserve for the production and maintenance of wild game and other wildlife; and

(b) The property conveyed shall be developed in a manner similar to other state parks and recreation areas, including but not limited to the provision of access roads, parking areas, shelters, and facilities. The property conveyed may be developed in a manner consistent with the landscape plans developed by the Game and Parks Commission for such property prior to August 26, 1983.

**Source:** Laws 1978, LB 885, § 1; Laws 1983, LB 75, § 1.

**90-221 Repealed. Laws 1996, LB 1044, § 985.**

**90-222 Repealed. Laws 1996, LB 1044, § 985.**

**90-223 Governor; convey easement and property to city of Lincoln.**

(1) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a water main over and through certain real property, situated in the city of Lincoln, Lancaster County, Nebraska, described as follows:

(a) The south fifteen feet of Lot 7, Block 15, Riverside Addition;

(b) The south fifteen feet of the north-south alley vacated by Ordinance Number 7620 of the city of Lincoln abutting Lots 6 and 7, Block 15, Riverside Addition;

(c) The south fifteen feet of that portion of Lot C, Riverside Addition, lying north of the north line of Military Road;

(d) The north fifteen feet of the west fifteen feet of that portion of Lot C, Riverside Addition, lying south of the south line of Military Road;

(e) The north fifteen feet of that portion of 12th Street vacated by Ordinance Number 1886 of the city of Lincoln lying south of the south line of Military Road; and

(f) The north fifteen feet of the east four hundred fifty-two feet of that portion of Lot E, Riverside Addition, lying south of the south line of Military Road.

(2) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, ownership of the water main and appurtenances thereto owned by the State of Nebraska located beneath such property and also located in public right-of-way known as Military Road and 14th Street within the city of Lincoln, Lancaster County, Nebraska.

**Source:** Laws 1980, LB 602, § 1.

**90-224 Adjutant General; convey easement to the city of York.**

(1) The Adjutant General is authorized by the Legislature to convey to the city of York, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer pipe for the passage of sewage water, together with all appurtenances, structures, and other applicable equipment pertaining to any sewer in, through, over, and under certain real estate legally described as follows:

The west two hundred fifty feet, more or less, of the east five hundred ten and one-half feet, more or less, of the north half of the southeast quarter of the northeast quarter of section 6, township 10 north, range 2 west of the 6th principal meridian, a part of the city of York, York County, Nebraska (State of Nebraska Armory site).

(2) The permanent easement for the sewage pipe conveyed in this section shall be ten feet in width and five feet on either side of the centerline, described as follows:

Beginning at a point on the north right-of-way line of sixth street and such point being seven and eighty-seven hundredths feet east of the southwest corner of the above described tract of land; thence in a northeasterly direction using a deflection angle to the left of twenty-eight degrees twenty minutes zero seconds from the northerly right-of-way line of sixth street a distance of six and ninety-seven hundredths feet to a point; thence northerly along a line which has a deflection angle to the left of sixty-one degrees forty minutes zero seconds from the last described course a distance of one hundred forty-five feet to a point; thence in a northwesterly direction along a line which has a deflection angle to the left of nineteen degrees seventeen minutes twenty-four seconds from the last described course a distance of forty-two and thirty-eight hundredths feet to a point on the westerly property line of such tract and such point being one hundred eighty-eight and thirty-one hundredths feet north of the southwest corner of such tract.

**Source:** Laws 1980, LB 602, § 2.

**90-225 Commissioner of Labor; convey property to city of Omaha.**

The Commissioner of Labor is hereby authorized and empowered to sell and convey, after June 30, 1981, the following described property: The north sixty-six feet of lots two and three, also described as the north one-half of lots two and three, and the north twenty-five feet of the south one-half of lots two and three, all in block two, Kountze and Ruth's addition to the city of Omaha, Douglas County, Nebraska.

**Source:** Laws 1980, LB 914, § 1.

**90-226 Repealed. Laws 1987, LB 32, § 3.**

**90-227 Adjutant General; convey easement to city of Lexington.**

The Adjutant General is authorized by the Legislature to convey to the city of Lexington, Nebraska:

(1) A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer pipe for the passage of sewer water, together with all appurtenances, structures, and other applicable equipment pertaining to any sewer in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at the northwest corner of lot three, Bowen's first addition to the city of Lexington, Dawson County, Nebraska; then south along the west line of lot three, twenty-one feet to the true point of beginning; then east, five hundred fifteen and nine-tenths feet; then south and along the east line of lot three, sixteen feet; then west, five hundred fifteen and nine-tenths feet; and then north and along the west line of lot three, sixteen feet to the point of beginning; and

(2) A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of electrical transmission line together with all appurtenances, structures, and other applicable equipment pertaining to such electrical transmission in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

The east forty feet of the north one hundred thirty-five feet of the south one hundred fifty-five feet of lot three, Bowen's first addition to the city of Lexington, Dawson County, Nebraska.

**Source:** Laws 1983, LB 116, § 1.

**90-228 Department of Correctional Services; convey described property.**

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed a tract of land located in the northwest quarter of the southwest quarter of section four, township eight north, range sixteen west of the sixth principal meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the northwest corner of said southwest quarter; thence easterly on the north line of said southwest quarter a distance of two hundred sixty-four feet to the actual place of beginning; thence continuing easterly on the aforesaid north line a distance of three hundred eighty-eight and eighty-eight hundredths feet to a four-inch iron pipe; thence southerly a distance of eighty-five and thirty-nine hundredths feet to a point on the north line of the existing public road; thence westerly on a six hundred eighty-seven and thirty-one hundredths radius curve and on the aforesaid north line a

distance of sixty-two and two hundredths feet to the point of tangency, said point being right eighty-five degrees fifty minutes fifty-three seconds from the east line of said tract and a chord distance of sixty-two feet from the last described point; thence tangent a distance of one hundred thirty-eight and four-tenths feet to the point of curvature; thence on a one thousand six hundred seven and sixty-one hundredths foot radius curve to the right forming a central angle of five degrees thirty-five minutes zero seconds a distance of one hundred fifty-six and sixty-six hundredths feet to the point of tangency; thence tangent a distance of thirty-two and twelve hundredths feet to a point, said point being two hundred sixty-four feet east of the west line of said southwest quarter; thence northerly and parallel to the aforesaid west line a distance of seventy-seven and eighty-seven hundredths feet to the place of beginning; containing seventy-seven hundredths acres, more or less.

**Source:** Laws 1983, LB 522, § 1.

**90-229 Repealed. Laws 1996, LB 1044, § 985.**

**90-230 Repealed. Laws 1996, LB 1044, § 985.**

**90-231 Repealed. Laws 1996, LB 1044, § 985.**

**90-232 Repealed. Laws 1996, LB 1044, § 985.**

**90-233 Repealed. Laws 1996, LB 1044, § 985.**

**90-234 Repealed. Laws 1996, LB 1044, § 985.**

**90-235 Repealed. Laws 1996, LB 1044, § 985.**

**90-236 Repealed. Laws 1996, LB 1044, § 985.**

**90-237 Repealed. Laws 1996, LB 1044, § 985.**

**90-238 Department of Roads; acquire described property.**

The Department of Roads is authorized to acquire from the Chicago and North Western Transportation Company its abandoned right-of-way described as follows: All of Chicago and North Western Transportation Company abandoned right-of-way in section 34, township 15 north, range 7 east, Saunders County, Nebraska. The department is also authorized to acquire all rights, interests, and titles related to such abandoned right-of-way.

**Source:** Laws 1984, LB 853, § 1.

**90-239 Governor; convey property to city of Lincoln.**

(1) The Governor is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and the replacement of a sanitary sewer, together with all appurtenances, structures, and other applicable equipment pertaining thereto over and through certain real property, situated in the city of Lincoln, Lancaster County, Nebraska, described as follows:

A strip of land forty feet in width through a portion of Lot 75, irregular tract, located in the southwest quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska.

(2) The permanent easement for the sanitary sewer conveyed in this section shall be twenty feet on either side of the centerline described as follows:

Commencing at the intersection with the centerline of Seventeenth Street and the south line of such southwest quarter of section 13, also known as the centerline of Holdrege Street extended; thence north along the centerline of Seventeenth Street, a distance of one hundred nineteen and forty-five hundredths feet to the centerline of the Burlington Northern Railroad right-of-way; thence northeasterly along such centerline a distance of one hundred sixty-four and seventy-six hundredths feet; thence northerly along a line which deflects fifty-six degrees, fifty-three minutes, zero seconds left, a distance of sixty-two and ninety-seven hundredths feet to the point of tangency with a circular curve; thence northerly along the arc of such circular curve bear to the left, whose central angle is thirty-one degrees, four minutes, twenty seconds, whose radius is three hundred thirty and twenty-eight hundredths feet, and whose tangent length is ninety-one and eighty-two hundredths feet, a distance of fifty-three and seventy-nine hundredths feet to the point of beginning; thence continuing along such circular curve, a distance of one hundred twenty-five and thirty-three hundredths feet to the point of tangency with a straight line; thence northwesterly along such straight line, a distance of three hundred four and seventy hundredths feet to the point of tangency with a circular curve; thence northerly along the arc of such circular curve bearing to the right, whose central angle is thirty-one degrees, twenty-nine minutes, zero seconds, whose radius is two hundred feet, and whose tangent length is fifty-six and thirty-seven hundredths feet, a distance of one hundred nine and ninety hundredths feet to the point of tangency with a straight line; thence north along such straight line, a distance of two hundred nine and sixty-one hundredths feet to the point of tangency with a circular curve; thence northwesterly along the arc of such circular curve bearing to the left, whose central angle is forty-five degrees, zero minutes, whose radius is two hundred feet and whose tangent length is eighty-two and eighty-four hundredths feet, a distance of one hundred fifty-seven and eight hundredths feet; thence west along a line which deflects forty-five degrees, zero minutes left from a line tangent to the previously described circular curve, a distance of one hundred thirty-four feet; thence northwesterly along a line which deflects seventy degrees, forty-eight minutes right, a distance of one hundred twenty feet to the point of ending; containing an area of forty-six thousand four hundred twenty-four and eighty hundredths square feet, more or less.

**Source:** Laws 1984, LB 863, § 1.

**90-240 State Board of Agriculture; convey easement.**

The State Board of Agriculture is authorized by the Legislature to convey to the city of Lincoln, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of street improvements in, through, over, and under certain real estate legally described as follows:

(1) A portion of lot 79, irregular tract, located in the northeast quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, in the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of such lot 79; thence proceeding southerly along a line parallel to and 33 feet west of the east line of section 13, a distance of 61.04 feet; thence southwesterly deflecting 55 degrees right, a distance of 56.02 feet; thence northwesterly deflecting 90 degrees right, a distance of 50 feet; thence northeasterly deflecting 90 degrees right along the north line of such lot 79, a distance of 91.03 feet to the point of beginning; containing an area of 3,676.15 square feet, more or less; and

(2) A portion of lot 80, irregular tract, located in the northeast quarter of section 13, township 10 north, range 6 east of the sixth principal meridian, in the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of such lot 80; thence proceeding southerly along a line parallel to and 33 feet west of the east line of section 13, a distance of 97.66 feet; thence northwesterly deflecting 145 degrees right, a distance of 80 feet; thence northeasterly deflecting 90 degrees right along the north line of such lot 80, a distance of 56.02 feet to the point of beginning; containing an area of 2,240.80 square feet, more or less.

**Source:** Laws 1985, LB 33, § 1.

**90-241 Adjutant General; convey described property.**

The Adjutant General is authorized by the Legislature to convey to the city of Wayne, Nebraska:

A permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of a sanitary sewer line, water main, storm sewer main, electrical transmission line, and permanent concrete street, together with all appurtenances, structures, and all other applicable equipment pertaining to any sanitary sewer line, water main, electrical transmission line, storm sewer main, and public concrete street, in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at the southwest corner of lot 9, block 7, Sunnyview Addition to the city of Wayne, Nebraska; thence southeasterly along the south line of such lot 9, as extended east, thirty-five feet; thence southerly and parallel to the east line of said lot 9, as extended south, 418.90 feet to the north right-of-way of Nebraska State Highway No. 35; thence westerly along said north right-of-way line, thirty-five feet; thence northerly and along the east line of said lot, as extended south, 418.90 feet, to the point of beginning, said real estate being located in the southeast quarter of section 7, township 26 north, range 4, east of the sixth principal meridian, Wayne County, Nebraska.

**Source:** Laws 1985, LB 235, § 1.

**90-242 Department of Correctional Services; convey described property.**

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, a permanent easement for slope work and bridge maintenance on certain real estate legally described as follows: The west seventeen feet of the fifty feet of the south sixty feet of the north four hundred thirty-one and nine-tenths feet of the north half of the

southeast quarter of section 10, township 9 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska.

**Source:** Laws 1985, LB 265, § 1.

**90-243 Department of Correctional Services; convey described property.**

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, a temporary easement for channel relocation and cleanout on the real estate legally described as follows: An irregular tract of land consisting of twenty-four hundredths of an acre, more or less, situated in the north half of the southeast quarter of section 10, township 9 north, range 6 east of the sixth principal meridian, Lancaster County, Nebraska, situated immediately to the west of the real estate described in section 90-242. The temporary easement shall last for the duration of the contract existing between Lancaster County and the Department of Correctional Services governing channel relocation and cleanout of the described real estate.

**Source:** Laws 1985, LB 265, § 2.

**90-244 Department of Administrative Services; sell or lease State Office Building in Omaha; distribution of proceeds.**

The Department of Administrative Services is authorized to sell or lease the property known as the State Office Building located at 210 North 78th Street, Omaha, Nebraska. The legal description of this property is part of lot 1 of block 1, Tower Plaza Addition in the northeast quarter of the northwest quarter of section 23, township 15 north, range 12 east of the 6th principal meridian in Douglas County, Nebraska. The department is authorized to sell the property or, if it is in the best interest of the state, the department may lease the property for a term not to exceed twenty years. The lease may contain an option to purchase the property at a value to be determined by the department. Proceeds of the sale or lease shall be paid to the Department of Administrative Services Cash Fund established in section 81-1108.17.

**Source:** Laws 1985, LB 420, § 1.

**90-245 Adjutant General; convey described easement.**

The Adjutant General is authorized by the Legislature to convey to the city of Gering, Nebraska, a permanent easement for the construction, reconstruction, inspection, maintenance, operation, and replacement of street improvements in, through, over, and under certain real estate known as the National Guard Armory property and legally described as follows:

Beginning at a point 65.0 feet east of the southwest corner of the southwest quarter of the southeast quarter of section 2, township 21 north, range 55 west of the sixth principal meridian, Scotts Bluff County, Nebraska; thence east, a distance of 300.0 feet parallel with the north line of the southwest quarter of the southeast quarter of said section; thence north, a distance of 25.0 feet parallel to the west line of the southwest quarter of the southeast quarter of said section; thence west, a distance of 300.0 feet parallel to the north line of the southwest quarter of the southeast quarter of said section; thence south, a distance of 25.0 feet to the point of beginning.

**Source:** Laws 1986, LB 756, § 1.

**90-246 Department of Correctional Services; convey described property.**

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed four real estate lots in the Hawthorne Addition of the city of Lincoln, Lancaster County, Nebraska, more particularly described as follows: Lots 8 and 9 on block 37 and lots 8 and 9 on block 38, Hawthorne Addition to the city of Lincoln, Lancaster County, Nebraska.

**Source:** Laws 1987, LB 374, § 1.

**90-247 Department of Correctional Services; sell described property.**

The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed two tracts of land located in the southeast quarter of section two, township nine north, range six, east of the sixth principal meridian, Lancaster County, Nebraska, more particularly described as follows:

(1) Referring to the east one-quarter corner of said section two; thence southerly along the east line of the southeast quarter of said section two on an assumed bearing of south zero degrees, zero minutes, zero seconds east a distance of sixty-six and no tenths feet; thence south eighty-nine degrees, fifty-six minutes, ten seconds west along the southerly thirty-three and no tenths-foot right-of-way line of Calvert Street as platted in the city of Lincoln a distance of five hundred forty-two and fifty-five hundredths feet to the point of beginning; thence south two degrees, fifty-seven minutes, twelve seconds west along the west line of relocated Thirteenth Street a distance of five hundred eighty-two and thirty-two hundredths feet to the point of curvature of a nine hundred thirteen and fifty-one hundredths-foot radius curve to the left; thence in a southwesterly direction along said nine hundred thirteen and fifty-one hundredths-foot radius curve to the left having a chord bearing of south sixteen degrees, twenty-three minutes, two seconds east and a chord distance of five hundred fifteen and thirty-five hundredths feet to the point of tangency of said curve; thence south thirty degrees, thirty-five minutes, nine seconds east a distance of three hundred ninety-three and ninety-one hundredths feet; thence south forty-six degrees, ten minutes, forty-two seconds west a distance of fifty-eight and thirty-four hundredths feet to a point on a five thousand thirty-two and seventy-four hundredths-foot radius curve to the right, said point being on the northeasterly one hundred fifteen and no tenths-foot right-of-way line of Nebraska State Highway No. 2; thence in a northwesterly direction along said five thousand thirty-two and seventy-four hundredths-foot radius curve to the right having a chord bearing of north forty degrees, seventeen minutes, thirty-two seconds west and a chord distance of five hundred eighty-one and thirty-eight hundredths feet to the point of tangency of said curve; thence north fifty-four degrees, fifty-eight minutes, thirty-nine seconds west a distance of one hundred forty and no tenths feet; thence north thirty degrees, fifty-eight minutes, seven seconds west a distance of three hundred thirteen and eighty-two hundredths feet to the point of curvature of a two thousand twenty-two and twenty-two hundredths-foot radius curve to the right; thence in a northwesterly direction along said two thousand twenty-two and twenty-two hundredths-foot radius curve to the right having a chord bearing of north twenty-seven degrees, five minutes, eleven seconds west and a chord distance of three hundred forty-one and ninety hundredths feet to the point of tangency of said curve; thence north fourteen degrees, thirty-nine minutes, fifty-seven seconds west a distance of three hundred sixty-nine and fifty-two hundredths feet to a point on the

southerly thirty-three and no tenths-foot right-of-way line of Calvert Street; thence north eighty-nine degrees, fifty-six minutes, ten seconds east along the southerly thirty-three and no tenths-foot right-of-way line of Calvert Street a distance of six hundred twenty-seven and sixty-three hundredths feet to the point of beginning; containing an area of eleven and twenty-eight hundredths acres, more or less; and

(2) Referring to the southeast corner of said section 2; thence in a northerly direction along the east line of the southeast quarter of said section two on an assumed bearing of north zero degrees, zero minutes, zero seconds east a distance of one thousand three hundred seventy-six and seventy hundredths feet; thence north ninety degrees, zero minutes, zero seconds west perpendicular to the last-described course a distance of thirty-three and no tenths feet to a point on the westerly thirty-three and no tenths-foot right-of-way line of Fourteenth Street as platted in the city of Lincoln and the point of beginning; thence south fifty-nine degrees, fifty-five minutes, thirty-five seconds west a distance of seventy-nine and seventy-four hundredths feet to a point on the northeasterly eighty-five and no tenths-foot right-of-way line of relocated Thirteenth Street; thence north thirty-three degrees, thirteen minutes, nine seconds west a distance of three hundred seventy-six and one hundredths feet; thence north twenty-three degrees, four minutes, fifty-seven seconds west a distance of one hundred eighty and sixty-eight hundredths feet; thence north twelve degrees, fifteen minutes, twenty-one seconds west a distance of one hundred fifty-five and two hundredths feet to a point on the southerly thirty and no tenths-foot right-of-way line of Stockwell Street; thence south eighty-nine degrees, one minute, forty seconds east along the southerly thirty and no tenths-foot right-of-way line of Stockwell Street a distance of three hundred seventy-eight and eighty-hundredths feet to a point on the westerly thirty-three and no tenths-foot right-of-way line of said Fourteenth Street; thence south zero degrees, zero minutes, zero seconds east along the westerly thirty-three and no tenths-foot right-of-way line of said Fourteenth Street a distance of five hundred eighty-five and eighty-eight hundredths feet to the point of beginning; containing an area of three and sixty-three hundredths acres, more or less.

**Source:** Laws 1987, LB 526, § 1.

**90-248 Department of Correctional Services; sale of land; State Treasurer's Land Sales Distributive Fund; created; use; investment.**

The land described in section 90-247 shall be sold to the highest bidder at public auction. The income from the sale of all or any portion of the land described in section 90-247 shall be deposited in the State Treasurer's Land Sales Distributive Fund, which fund is hereby created. The distributive fund shall be used only for the purpose of refunding money to the purchaser of the land as provided by any contract or agreement or, when all conditions of the sale have been fulfilled, for transfer of the income from the sale and any accrued interest to the State Treasurer for credit to the General Fund. Any money in the distributive 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.

**Source:** Laws 1987, LB 526, § 2; Laws 1995, LB 7, § 155.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

**90-249 Repealed. Laws 1996, LB 1044, § 985.****90-250 Repealed. Laws 1996, LB 1044, § 985.****90-251 State Department of Education; sell described property; proceeds.**

(1) The State Department of Education may sell and convey by quitclaim deed two parcels of land generally described as follows:

(a) A parcel of land in the northwest quarter of section 31, township 9, range 14, in Otoe County, Nebraska, designated as tract number 4, consisting of eleven and nine-tenths acres, more or less, as shown by the plat of Lester Ehlers, engineer and surveyor, sworn to November 22, 1950, filed December 4, 1950, in Deeds Book 97, page 298, in the Office of the Register of Deeds of Otoe County, Nebraska, subject to and less public road and Missouri Pacific Railroad right-of-way; and

(b) A triangular tract of land starting at the northeast corner of the southeast quarter of the northeast quarter of section 36, township 9, range 13, thence south on the section line three hundred fifty feet, thence in a northwesterly direction four hundred four feet along the center line of the Missouri Pacific Railroad right-of-way to the north line of the southeast quarter of the northeast quarter, thence east on such line to the point of beginning, containing one and six-tenths acres, more or less, all of the above-described land being subject to the Missouri Pacific Railroad right-of-way and the public road and all of such land being in Otoe County, Nebraska.

(2) The income from the sale of all or any portion of the land described in subsection (1) of this section shall be deposited in the State Department of Education Trust Fund. The department may use the income from the sale of the land to pay any selling expenses associated with the sale.

**Source:** Laws 1987, LB 526, § 5.

**90-252 Department of Correctional Services; convey described property.**

(1) The Department of Correctional Services is hereby authorized to sell and convey by quitclaim deed to Lancaster County, Nebraska, a tract of land located in the northwest quarter of section 9, township 9 north, range 6 east of the 6th principal meridian, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the southeast corner of the northwest quarter thence in a westerly direction with the south line of the northwest quarter, a distance of seven hundred feet; thence in a northerly direction perpendicular to the south line, a distance of thirty-three feet; thence in a northeasterly direction to a point located six hundred feet westerly from the southeast corner as measured with the south line and forty feet distant from and measured perpendicular to the south line; thence in an easterly direction parallel with the south line, a distance of five hundred feet; thence in a northeasterly direction to a point located fifty feet northerly from and measured perpendicular to the south line and forty feet westerly from and measured perpendicular to the east line of the northwest quarter; thence in a northerly direction parallel with and forty feet distant from the east line of the northwest quarter, a distance of eight hundred eighty-six and seventy-six hundredths feet; thence in a northwesterly direction

to a point located eleven hundred thirty-six and seventy-six hundredths feet northerly from the southeast corner of the northwest quarter as measured with the east line and sixty feet westerly from and measured perpendicular to the east line; thence in a northeasterly direction to a point located thirteen hundred thirty-six and seventy-six hundredths feet northerly from the southeast corner as measured with the east line and forty feet westerly from and measured perpendicular to the east line; thence in a northwesterly direction to a point located one thousand nineteen and ninety-six hundredths feet southerly from the northeast corner of the northwest quarter as measured with the east line and fifty feet westerly from and measured perpendicular to the east line; thence in a northerly direction parallel with the east line, a distance of two hundred feet; thence in a northeasterly direction to a point located six hundred nineteen and sixty-nine hundredths feet southerly from the northeast corner as measured with the east line and forty feet westerly from and measured perpendicular to the east line; then in a northerly direction, parallel with the east line to a point on the north line of the northwest quarter; thence in an easterly direction on the north line to the northeast corner of the northwest quarter; thence in a southerly direction on the east line of the northwest quarter, a distance of two thousand six hundred fifty-six and seventy-two hundredths feet, more or less, to the point of beginning; containing three and twenty-four hundredths acres, more or less, of which two and fifty-two hundredths acres, more or less, is existing county road right-of-way, making a net additional right-of-way of seventy-two hundredths acre, more or less.

(2) The Department of Correctional Services may receive payments from Lancaster County for trees removed from state property in connection with this conveyance. Such payments shall be deposited in the Department of Correctional Services Facility Cash Fund to be used by the department for the purchase and planting of replacement trees.

**Source:** Laws 1988, LB 854, § 1.

**90-253 Department of Economic Development; convey described property; proceeds.**

The Department of Economic Development is authorized, upon written approval of the Governor, to sell, lease, or otherwise convey the following described real estate: All of lots 4 thru 15, block 6, Murray's Addition to Oklahoma, an addition to the city of Omaha, in section 34, township 15 north, range 13 east of the 6th P.M.; Douglas County, Nebraska, together with the easterly part of lots 16 and 17 more particularly described as follows: Beginning at the southeast corner of lot 16 thence one hundred thirty-four feet to the northeast corner of lot 17; thence east sixty-two and eight-tenths feet; thence southwesterly to a point thirty-eight and nine-tenths feet east of the southwest corner of lot 17; thence southwesterly to a point eight and six-tenths feet east of the southwest corner of lot 16; thence east to the point of beginning; together with the easterly part of lot 19 more particularly described as follows: Beginning at the southeast corner of said lot 19; thence north fifty and eight-tenths feet; thence southwesterly sixty and three-tenths feet to a point thirty-two and one-half feet west of the said southeast corner; thence east thirty-two and one-half feet to the point of beginning. Together with the following described parts of lots 9 thru 16, block 5, said Murray's Addition: Beginning at the southwest corner of lot 9; said block 5; thence north seventy-five feet; thence southeasterly to a point on the east line of said lot 9, fifty-five feet north

of the southeast corner of said lot 9 then southeasterly to a point on the east line of lot 11; said block 5 said point being twenty-seven feet north of the southeast corner of said lot 11, thence east to a point on the east line of lot 12; said block 5, said point being twenty-seven feet north of the southeast corner of said lot 12; thence northeasterly to a point on the east line of lot 13; said block 5; said point being forty feet north of the southeast corner of said lot 13; thence northeasterly to a point on the east line of lot 14; said block 5; said point being sixty feet north of the southeast corner of said lot 14; thence northeasterly to a point on the east line of lot 16; said block 5, said point being one hundred twenty-nine feet north of the southeast corner of said lot 16; thence south to the southeast corner of said lot 16; thence west to the southwest corner of said lot 9. Together with the streets and alleys lying between the above described lots; commonly referred to as the Nebraska Omaha Travel Information Center. If the real estate is leased, such lease may contain an option to purchase the property at a value in the best interests of the state to be determined by the department. Proceeds of the sale or lease shall be deposited in the appropriate fund in the same manner as proceeds are deposited in section 81-161.04 and used for the purposes set forth for the fund.

**Source:** Laws 1988, LB 1143, § 8.

**90-254 Department of Correctional Services; convey described property.**

The Department of Correctional Services is authorized by the Legislature to convey by quitclaim deed to the county of Lancaster, Nebraska, for the widening and improvement of Old Cheney Road and South Folsom Streets, a part of lot 43, irregular tract in the southeast quarter, and of lot 41, irregular tract in the northeast quarter, both in section 10, township 9 north, range 6 east of the 6th principal meridian, Lancaster County, Nebraska, more particularly described as follows: Referring to the southeast corner of the southeast quarter of said section 10; thence westerly with the south line of the said southeast quarter to the southwest corner of the southeast quarter of the said southeast quarter; thence northerly with the west line of the said southeast quarter of the southeast quarter to a point thirty-three feet distant from and measured perpendicular to the said south line, said point being a point of intersection with the existing northerly right-of-way line of West Old Cheney Road and the point of beginning; thence continuing with the last-described course to a point fifty feet distant from the said south line; thence easterly parallel with the said south line, a distance of seven hundred twenty-one and ninety-five hundredths feet, more or less, to a point of intersection with the existing northerly right-of-way line; thence southwesterly on a deflection angle of one hundred sixty-seven degrees, twenty-three minutes, thirty-eight seconds right, with the said right-of-way line, a distance of seventy-seven and eighty-nine hundredths feet to a point thirty-three feet northerly from and measured perpendicular to the said south line; thence westerly parallel with the said south line to the point of beginning; and referring to the southwest corner of the southeast quarter of said section 10; thence northerly with the west line of the said southeast quarter, a distance of one thousand three hundred nineteen and nineteen hundredths feet, more or less, to the southwest corner of the northwest quarter of the southeast quarter, said point also being the point of beginning; thence easterly with the south line of the said northwest quarter of the southeast quarter to a point fifty feet distant from the said west line; thence northerly parallel with the said west line to a point of intersection with the existing easterly right-of-way of South Folsom

Street, said point located one hundred forty-one and twenty-two hundredths feet southerly from the northwest corner of the northeast quarter of said section 10, as measured with the said west line; thence southwesterly on a deflection angle of one hundred sixty-eight degrees, twenty-one minutes, thirty-six seconds left, with the said right-of-way line, a distance of eighty-four and twenty-six hundredths feet; thence westerly perpendicular to the said west line, a distance of thirty-three feet to a point of intersection with the said west line, said point also being two hundred twenty-three and seventy-five hundredths feet southerly from the said northwest corner; thence southerly with the said west line to the point of beginning; containing four and sixty-one hundredths acres, more or less.

**Source:** Laws 1990, LB 970, § 1.

**90-255 Department of Correctional Services; donation to county; damages paid by county.**

The Department of Correctional Services is authorized by the Legislature to convey to the county of Lancaster, Nebraska, the real estate described in section 90-254 as a donation. Damages computed for removal of trees or fencing shall be paid by Lancaster County to the Department of Correctional Services Facility Cash Fund to be used for replacement of such trees and fencing.

**Source:** Laws 1990, LB 970, § 2.

**90-256 Repealed. Laws 1996, LB 1044, § 985.**

**90-257 Repealed. Laws 1996, LB 1044, § 985.**

**90-258 Repealed. Laws 1996, LB 1044, § 985.**

**90-259 Repealed. Laws 1996, LB 1044, § 985.**

**90-260 Game and Parks Commission; convey described property.**

The Game and Parks Commission is authorized and directed to convey to the Department of Roads the following described real estate situated in the county of Dawson, in the State of Nebraska, to wit: A tract of land located in the northeast quarter of section 20, township 9 north, range 21 west of the 6th principal meridian, Dawson County, Nebraska, described as follows: Beginning at the northeast corner of section 20; thence westerly on the north line of the northeast quarter of section 20 a distance of 2,360.8 feet; thence southeasterly 133 degrees, 47 minutes left a distance of 34.3 feet; thence continuing southeasterly 21 degrees, 49 minutes left a distance of 107.5 feet; thence continuing southeasterly 21 degrees, 49 minutes right a distance of 734.9 feet to point of curvature; thence continuing southeasterly on a 718.5-foot radius curve to the left (initial tangent of which coincides with the last-described course) a distance of 331.3 feet to point of tangency; thence continuing southeasterly tangent, a distance of 787.3 feet; thence continuing southeasterly 2 degrees, 11 minutes left a distance of 686.6 feet to a point on the east line of the northeast quarter; thence northerly on the east line a distance of 1,256.9 feet to the point of beginning, containing 39.04 acres, more or less.

**Source:** Laws 1991, LB 500, § 1.

**90-261 Repealed. Laws 2000, LB 885, § 3.**

**90-262 Repealed. Laws 2000, LB 885, § 3.**

**90-263 Repealed. Laws 2000, LB 885, § 3.**

**90-264 Adjutant General; convey easement to the city of Wahoo.**

The Adjutant General is authorized by the Legislature to convey to the city of Wahoo, Nebraska, a permanent easement for the maintenance of a sanitary sewer line, with all appurtenances and accessories, in, through, over, and under certain real estate legally described as follows: A twelve-foot-wide strip of land for the maintenance of a sanitary sewer line, with appurtenances and accessories, being part of vacated 17th Street, part of vacated 18th Street, and part of Block 2, in Sunnyside Addition to the City of Wahoo, Saunders County, Nebraska, being described as follows: Commencing at the southeast corner of Block 1 of said Sunnyside Addition; thence N88° 21' 15" W (assumed bearing) on the south line of said Block 1, 125.65 feet to the true point of beginning; thence continuing N88° 21' 15" W on said south line, 12.00 feet; thence S00° 56' 40" W, 339.46 feet; thence S74° 21' 08" E, 148.70 feet to a point on the west line of Chestnut Street; thence N00° 00' 00" W on said west line, 12.46 feet; thence N74° 21' 08" W, 136.08 feet; thence N00° 56' 40" E, 330.05 feet to the true point of beginning.

**Source:** Laws 1995, LB 772, § 1.

**90-265 Game and Parks Commission; convey described property.**

The Game and Parks Commission is authorized and directed to convey to the county of Buffalo for public park purposes, subject to the conditions described in section 90-266, the following described real estate now known as Ravenna State Recreation Area, situated in Buffalo County, Nebraska, to wit:

(1) A tract of land in the southwest quarter of section 10 and the east part of the southeast quarter of section 9, township 12 north, range 14 west of the sixth principal meridian, situated in Buffalo County, Nebraska, described as follows: Beginning at a point 200 feet east of the southwest corner of the southwest quarter of section 10, township 12 north range 14 west of sixth principal meridian; thence north for a distance of 900 feet; thence west for a distance of 200 feet; thence north to a point 450 feet south of northwest corner of the southwest quarter of said section 10; thence west for a distance of 385 feet; thence north for a distance of 50 feet; thence east for a distance of 385 feet to the northwest corner of the southwest quarter of said section 10; thence east for a distance of 700 feet; thence angle right 42 degrees, 30 minutes, for a distance of 236 feet; thence angle right 8 degrees, 0 minutes, for a distance of 284 feet; thence angle left 3 degrees, 2 minutes, for a distance of 138 feet; thence angle left 17 degrees, 9 minutes, for a distance of 197 feet; thence angle right 43 degrees, 34 minutes, for a distance of 383 feet; thence angle right 16 degrees, 51 minutes, for a distance of 216 feet; thence angle right 20 degrees, 47 minutes, for a distance of 21 feet; thence angle left 13 degrees, 53 minutes, for a distance of 272 feet, to the east line of the west half of the said southwest quarter of section 10; thence south one for a distance of 1,044 feet to the south line of said southwest quarter of section 10; thence west for a distance of 1,120 feet to the place of beginning and containing 78.03 acres, more or less;

(2) A tract of land beginning at the southeast corner of the west half of the southwest quarter of section 10, township 12 north, range 14 west of the sixth principal meridian, running due north for a distance of 1,044 feet; thence angle right 7 degrees, 38 minutes, for a distance of 272 feet; thence angle right 13 degrees, 53 minutes, for a distance of 214 feet; thence angle left 20 degrees, 47 minutes, for a distance of 216 feet; thence angle left 43 degrees, 34 minutes, for a distance of 182 feet; thence angle right 157 degrees, 21 minutes, for a distance of 137 feet; thence angle right 21 degrees, 53 minutes, for a distance of 100 feet; thence angle right 14 degrees, 17 minutes, for a distance of 95 feet; thence angle right 10 degrees, 7 minutes, for a distance of 164 feet; thence angle right 5 degrees, 43 minutes, for a distance of 100 feet; thence angle right 5 degrees, 30 minutes, for a distance of 195 feet; thence angle left 12 degrees, 26 minutes, for a distance of 72 feet; thence angle left 17 degrees, 1 minute, for a distance of 307 feet; thence angle right 11 degrees, 47 minutes, for a distance of 100 feet; thence angle right 2 degrees, 30 minutes, for a distance of 150 feet; thence angle right 1 degree, 19 minutes, for a distance of 160 feet; thence angle right 0 degrees, 44 minutes, for a distance of 220 feet; thence angle left 27 degrees, 52 minutes, for a distance of 111 feet, to the railroad right-of-way line; thence on the railroad right-of-way line angle right 62 degrees, 27 minutes, for a distance of 37.8 feet, to the intersection of the right-of-way line and the south line of section 10, township 12 north, range 14 west of the sixth principal meridian; thence a distance of 82.7 feet west along the south line of section 10, township 12 north, range 14 west of the sixth principal meridian, to the southeast corner of the west half of the southwest quarter of section 10, township 12 north, range 14 west of the sixth principal meridian, which is the point of beginning, containing 2.63 acres, more or less; and

(3) A strip of land 100 feet in width situated in the southeast quarter of the northeast quarter of section 16, township 12 north, range 14 west of the sixth principal meridian, extending southwesterly from the east line of said section 16 to the northeasterly boundary line of Nebraska State Highway 2, said strip being 50 feet in width, measured at right angles on each side of the following described center line of former main track of the Pleasanton branch of Union Pacific Railroad Company as formerly constructed and operated: Beginning at a point on the east line of said section 16 that is a distance of 1,550 feet south of the northeast corner of said section 16; thence southwesterly along a straight line forming an angle of 46 degrees, 15 minutes, from south to southwest with the east line of said section 16 for a distance of 1,130 feet, more or less, to a point in said northeasterly boundary line of existing Nebraska State Highway 2, containing an area of 2.59 acres, more or less, in Buffalo County, Nebraska.

**Source:** Laws 1996, LB 1070, § 1.

**90-266 Buffalo County; grant permanent easement.**

Buffalo County, Nebraska, shall grant a permanent easement across the real estate described in section 90-265 to Emil J. Obermiller and Vicki L. Obermiller for the purpose of access to the Obermiller's property adjacent to such real estate. Emil J. Obermiller and Vicki L. Obermiller shall grant a permanent easement on such adjacent real estate to Buffalo County, Nebraska, and the city of Ravenna, for recreational trail purposes, on one hundred feet from the northernmost boundary to the south and the entire width from east to west of such one hundred feet, of the real estate situated in Buffalo County, Nebraska,

and described on microfilm roll 94, pages 2946 and 2947, in the records of the Buffalo County Register of Deeds.

**Source:** Laws 1996, LB 1070, § 2.

**90-267 Nebraska Army National Guard complex; sale of property authorized.**

(1) Notwithstanding sections 72-811 to 72-818 or any other provision of law, the State Building Administrator or his or her designee, in consultation with the Adjutant General, is authorized to sell land and six buildings located at 1300 Military Road, 1234 Military Road, 1237 Military Road, Cold Storage Building, and the Engagement Skills Trainer in Lincoln, Nebraska, by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale, and if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in Lancaster County and not less than thirty days prior to the sale of the property. The properties are all in the Nebraska Army National Guard complex along Military Road between 10th Street and 14th Street in Lincoln, Nebraska. The tracts include Tracts A, B, C, and D. The larger tracts have been split to provide a general legal description for each of the six parcels. The following of the subject properties are in Tract A and legally described as follows:

(a) TAG. The southeast part of Tract A in the area of the TAG Building, the lot would then extend northwest into the north part of Lot A. The site would generally include the south 200 feet of the east 300 feet of Tract A plus a tract about 100 feet in width that extends north from the west part of the 300 feet. The total size is estimated to be 82,764 square feet;

(b) NEMA. This tract is the northeast part of Tract A extending north along 14th Street from the TAG tract to the north property line. It would include the east 200 feet of Tract A except the south 200 feet. The total size is estimated to be 80,150 square feet; and

(c) USPFO. This is the remainder of Tract A. It is generally the west 368 feet of Tract A extending from Military Road north of Salt Creek but excluding the part owned by the State of Nebraska and leased to the city of Lincoln. The total size is estimated to be 3.74 acres or 162,914 square feet.

(2) The other three tracts are located in the east 300-plus feet of Tract B. Such tracts are located south of Military Road, and the east line of the tracts is about 160 feet west of 14th Street. The tracts have a depth of about 352 feet. These properties are legally described as follows:

(a) DCSIM Building. Generally the east 178 feet of the south 196 feet of the tracts;

(b) Trainer Building. Generally the west 192 feet of the north 156 feet of the tracts and including an easement drive to the DCSIM Tract; and

(c) Cold Storage Building. Generally the east 122 feet of the tracts.

(3) The land and buildings described in this section may be sold either as a combined package or in such individual parcels as mutually agreed upon by the State Building Administrator and the Adjutant General.

(4) This section terminates on July 1, 2015.

**Source:** Laws 2003, LB 403, § 1; Laws 2006, LB 1061, § 18.  
Termination date July 1, 2015.

**90-268 Proceeds; disposition.**

All proceeds from the sale of any land or buildings described in section 90-267, including investment income on the sale proceeds of the property, shall be separately accounted for and credited to a separate optional cash account within the Vacant Building and Excess Land Cash Fund and shall be designated for the Military Department Joint Operations Center project.

This section terminates on July 1, 2015.

**Source:** Laws 2003, LB 403, § 2; Laws 2006, LB 1061, § 19.  
Termination date July 1, 2015.

**90-269 Military Department Joint Operations Center project; transfer of funds.**

After paying any maintenance expenses pending the sale and selling expenses associated with the sale of land and buildings described in section 90-267, the State Building Administrator shall administratively transfer any money available in the separate optional cash account within the Vacant Building and Excess Land Cash Fund designated for the Military Department Joint Operations Center project as authorized pursuant to section 90-268, in the following priority manner:

(1) First, \$975,000 shall be administratively transferred from the Vacant Building and Excess Land Cash Fund to the Joint Operations Center Capital Construction Fund in either a single full transfer amount or in partial transfer amounts as the funds become available;

(2) Second, after completing the transfer of the total amount specified in subdivision (1) of this section, an amount shall be administratively transferred from the Vacant Building and Excess Land Cash Fund to the Military Department Cash Fund in the exact amount equal to or less than one hundred thousand dollars as certified in writing by the Adjutant General to the budget administrator of the budget division of the Department of Administrative Services and to the State Building Administrator, but only as required to fully reimburse the federal government for certain previous renovation expenses; and

(3) Third, after completing the full transfer amounts required pursuant to subdivisions (1) and (2) of this section, any remaining fund balance in the separate optional cash account within the Vacant Building and Excess Land Cash Fund as designated for the Military Department Joint Operations Center project, including any investment income credited to the fund, shall be administratively transferred to the General Fund.

This section terminates on July 1, 2015.

**Source:** Laws 2003, LB 403, § 3; Laws 2006, LB 1061, § 20.  
Termination date July 1, 2015.

**90-270 Joint Operations Center Capital Construction Fund; created; use; investment.**

The Joint Operations Center Capital Construction Fund is created. The fund shall consist of revenue administratively transferred from the Vacant Building and Excess Land Cash Fund pursuant to section 90-269 and may also include administrative interfund transfers from the Governor's Emergency Cash Fund and the Military Department Cash Fund, which are hereby authorized, except that any administrative interfund transfers made pursuant to this section from the Governor's Emergency Cash Fund and the Military Department Cash Fund shall be reversed on or before June 30, 2015. The Joint Operations Center Capital Construction Fund shall be used to construct and furnish combined office space for the Nebraska Emergency Management Agency and the Nebraska State Patrol Communications Operations Center, including any necessary relocation expenses of the offices and the Nebraska State Patrol communications switcher. The fund shall be administered by the State Administrator of the Nebraska Emergency Management Agency. Any money in the 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. The fund balance in the Joint Operations Center Capital Construction Fund existing as of June 30, 2015, plus any investment income credited to the fund after June 30, 2015, shall be transferred to the General Fund.

This section terminates on July 1, 2015.

**Source:** Laws 2003, LB 403, § 4; Laws 2006, LB 1061, § 21.  
Termination date July 1, 2015.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

#### 90-271 Ferguson House; sale prohibited.

The Department of Administrative Services shall not sell the property known as the Ferguson House and the appurtenant carriage house located at 700 South 16th Street, Lincoln, Nebraska. The legal description of this property is lots 4, 5, and 6, block 153, original plat, Lincoln, Lancaster County, Nebraska.

**Source:** Laws 2004, LB 1092, § 10.

### ARTICLE 3

#### CAPITOL ENVIRONS

##### Section

- 90-301. Act, how cited.
- 90-302. Legislative intent.
- 90-303. Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.
- 90-304. Nebraska State Capitol Environs District; beautification projects; participation; procedure.
- 90-305. Nebraska State Capitol Environs District; beautification projects; financing.
- 90-306. Governor; appoint board or commission members.
- 90-307. Nebraska State Capitol Environs Commission; decision or action; appeal.
- 90-308. City of Lincoln; duties.
- 90-309. Nebraska State Capitol Environs Commission; annual meeting; report.

#### 90-301 Act, how cited.

Sections 90-301 to 90-309 shall be known and may be cited as the Nebraska State Capitol Environs Act.

**Source:** Laws 1977, LB 172, § 1; Laws 1988, LB 962, § 1; Laws 1993, LB 271, § 1.

**90-302 Legislative intent.**

The Legislature hereby finds that the Nebraska State Capitol and its environs are a source of pride and inspiration to the citizens of the state. It recognizes that the State Capitol, designated as a National Historic Landmark and regarded as one of the architectural masterpieces in the world, owes a major part of its recognition, esteem, and value to the inspiring manner in which its high tower physically dominates neighboring buildings and to the fact that it serves as a prominent landmark and focal point for inspiring vistas in the capital city of the state and for many miles beyond. The Legislature further finds that the preservation of the dominant height of the State Capitol in relation to surrounding structures should be a concern not only for the citizens of the city of Lincoln but for all of the citizens of the state, for the State Capitol is a financial, cultural, and aesthetic investment and resource of the entire citizenry. The Legislature further finds that the structures and improvements in the State Capitol environs directly affect the ability of citizens to enjoy the historical, cultural, and aesthetic treasure they have in their State Capitol. Therefore, the Legislature declares and explains its intention to reclaim certain regulatory powers that it has delegated to municipalities, in this case to the city of Lincoln, by directly imposing maximum height restrictions in the State Capitol environs. The Legislature implements these restrictions for the benefit of all the citizens of Nebraska with the further explanation that the maximum height restrictions being required by section 90-303 are those which were in effect at the time this legislation was introduced, that the value of real estate in the State Capitol environs has been increased substantially by the proximity of such real estate to the State Capitol and by the investment of state resources in the construction, maintenance, and protection of the State Capitol, that the value of such real estate will undoubtedly continue to increase because of state maintenance and protection of the State Capitol despite, and in part because of, the height restrictions imposed by the city of Lincoln or such section, and that the involvement of the State of Nebraska in the regulation of structure height in the State Capitol environs through such section, in conjunction with the regulatory power of the city of Lincoln, will inject a greater degree of stability in the governmental process for regulating heights in the State Capitol environs, which will in turn benefit all Nebraska citizens. The Legislature further declares its intention to exercise certain regulatory powers for the benefit of the citizens of Nebraska by delegating to the city of Lincoln the authority to review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District.

**Source:** Laws 1977, LB 172, § 2; Laws 1993, LB 271, § 2.

**90-303 Nebraska State Capitol Environs District; maximum height restrictions; enforcement; exemptions; city of Lincoln; powers and duties.**

(1) The maximum height of any buildings and structures built after March 8, 1977, shall be restricted as follows:

(a) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Seventeenth Street, on the north by K Street, on the east by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the south

by a boundary formed by a line extending directly in a true east direction to the east property line of Twenty-fourth Street from the centerpoint of the intersection of Seventeenth and H Streets, all streets in the city of Lincoln, Lancaster County, Nebraska;

(b) The maximum height of buildings and structures shall be forty-five feet or National Geodetic Survey elevation 1235.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by G Street, on the east by Sixteenth Street, and on the south by Washington Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(c) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Thirteenth Street, on the north by L Street, on the east by Seventeenth Street, and on the south by G Street, all streets in the city of Lincoln, Lancaster County, Nebraska;

(d) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Fourteenth Street, on the north by S Street, on the east by Sixteenth Street, and on the south by L Street, all streets in the city of Lincoln, Lancaster County, Nebraska; and

(e) The maximum height of the buildings and structures shall be fifty-seven feet or National Geodetic Survey elevation 1247.0 feet, whichever is lower, within an area bounded on the west by Tenth Street, on the north by K Street, on the east by Thirteenth Street, and on the south by H Street, all streets in the city of Lincoln, Lancaster County, Nebraska.

(2) For the purposes of the Nebraska State Capitol Environs Act, the areas and the full width of the right-of-way boundary streets described in subsections (1) and (3) of this section shall together constitute and be defined as the Nebraska State Capitol Environs District.

(3) Design approval shall be required for all aboveground utility, construction, and landscape improvements in the public right-of-way bounded on the north and south by the property lines of J Street, on the west by a boundary formed by a line extending in a true south direction as an extension of the east property line of Twenty-fourth Street, and on the east by a line extending in a true north direction as an extension of the east property line of Thirty-fifth Street.

(4) The city of Lincoln shall insure, through its inspection and permit procedures, that the maximum height restrictions and design review process prescribed by this section for the Nebraska State Capitol Environs District are enforced.

(5) The height restrictions and design review process required by this section shall apply, within the Nebraska State Capitol Environs District, to all real estate in private or quasi-public ownership and to real estate owned by the State of Nebraska and local governmental units of all types.

(6) The following appurtenances shall be exempt from the height restrictions required by this section, but such appurtenances shall not exceed twenty feet in height above the maximum height permitted in subsection (1) of this section and shall be set back a minimum of fifteen feet from all faces of a building when such faces are adjacent to a street: Church spires, cooling towers with

approved screening, elevator bulkheads, fire towers, monuments, stage towers or scenery lofts, ornamental towers, and spires.

(7) Nothing in the act shall be construed as limiting the authority of the city of Lincoln to impose lower height restrictions than those maximum height limits established by subsection (1) of this section or in establishing lower height restrictions for appurtenances than those required by subsection (6) of this section.

(8) The city of Lincoln shall review and approve or disapprove plans and proposals for demolition, exterior alteration, and construction of structures and other improvements in the Nebraska State Capitol Environs District. The city of Lincoln shall adopt regulations within its zoning code vesting responsibility for review, approval, and disapproval of projects with the Nebraska State Capitol Environs Commission established by the city of Lincoln.

(9) The regulations of the city of Lincoln for design review in the Nebraska State Capitol Environs District shall emphasize the long-term enhancement of the State Capitol's setting and of enjoyment of the State Capitol by the citizens while respecting the interests of property owners, including economic interests and the desirability of predictable, expeditious review.

**Source:** Laws 1977, LB 172, § 3; Laws 1993, LB 271, § 3; Laws 2002, LB 729, § 13.

**90-304 Nebraska State Capitol Environs District; beautification projects; participation; procedure.**

(1) The State of Nebraska, acting through the Department of Administrative Services, is hereby empowered to expend appropriations authorized by the Legislature and to otherwise participate fully in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District as an individual governmental entity, or in similar projects which are jointly initiated and financed with the city of Lincoln or the county of Lancaster or both governmental bodies in the Nebraska State Capitol Environs District.

(2) The city of Lincoln and the county of Lancaster are hereby empowered to expend their respective funds to participate singly, with each other, and with the State of Nebraska, in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District. Construction and maintenance projects authorized in this section shall only be implemented on the street and alley rights-of-way in the Nebraska State Capitol Environs District, as such district is defined by subsection (2) of section 90-303, and on real estate within the Nebraska State Capitol Environs District which is owned singly by the State of Nebraska, the city of Lincoln, the county of Lancaster, by these three governmental bodies jointly or by any two of such governmental bodies.

(3) Neither the State of Nebraska, city of Lincoln, or county of Lancaster is authorized to utilize eminent domain powers to accomplish the purposes of sections 90-301 to 90-305; *Provided*, that nothing in sections 90-301 to 90-305 shall prevent the exercise of eminent domain by any governmental entity so empowered to acquire public rights-of-way; *and provided further*, that this prohibition shall not be construed as deterring any one of the three governmen-

tal bodies from utilizing any existing powers it has on projects it undertakes singly.

**Source:** Laws 1977, LB 172, § 4.

**90-305 Nebraska State Capitol Environs District; beautification projects; financing.**

The State of Nebraska, city of Lincoln, and county of Lancaster may share in financing such activities in any proportions which are mutually agreeable on a three-party basis, or in any combination of two parties. Such entities are also, jointly, singly, or in any combination, empowered to enter into contracts and to receive and expend funds from any private sources or public body, including the federal government, for the purposes described in section 90-304. The State of Nebraska, city of Lincoln, or county of Lancaster may act as a financial agent, project manager, and maintenance agency for one or both of the other governmental bodies in implementing the purposes described in section 90-304.

**Source:** Laws 1977, LB 172, § 5.

**90-306 Governor; appoint board or commission members.**

The Governor may appoint members to a board or commission which is formed by the city of Lincoln or the county of Lancaster or both governmental bodies to protect and improve the Nebraska State Capitol environs.

**Source:** Laws 1988, LB 962, § 2.

**90-307 Nebraska State Capitol Environs Commission; decision or action; appeal.**

Any decision or action of the Nebraska State Capitol Environs Commission may be appealed to the city council of the city of Lincoln by filing an appeal with the city clerk within thirty days of the date of the commission's action, except that governmental units may opt to appeal actions of the commission to the Department of Administrative Services by so indicating at the time of filing the appeal with the city clerk.

**Source:** Laws 1993, LB 271, § 4.

**90-308 City of Lincoln; duties.**

Within six months after September 9, 1993, the city of Lincoln shall prepare for preliminary review regulations implementing the design review process in accordance with the Nebraska State Capitol Environs Act and shall adopt such regulations as an amendment to its zoning code within twelve months after September 9, 1993.

**Source:** Laws 1993, LB 271, § 5.

**90-309 Nebraska State Capitol Environs Commission; annual meeting; report.**

(1) The Nebraska State Capitol Environs Commission shall meet at least annually with the Nebraska Capitol Commission to discuss and coordinate projects that may impact the capitol and its surrounding environs pursuant to section 81-1108.38.

(2) The Nebraska State Capitol Environs Commission shall report each January to the city council and mayor of the city of Lincoln, to the Legislature, and to the Governor. The report shall review the major decisions rendered during the preceding year and outline the rationale for the decisions. The report may also survey the status of the Nebraska State Capitol Environs District and make recommendations for its enhancement and protection.

**Source:** Laws 1993, LB 271, § 6; Laws 1999, LB 297, § 3.

**ARTICLE 4  
SPECIFIC PROJECTS**

Section

- 90-401. Game and Parks Commission; Red Willow and Strunk Lake State Recreation Areas; construct campgrounds and other recreation developments.
- 90-402. Game and Parks Commission; Rock Creek Fish Hatchery; modernize.
- 90-403. Eugene T. Mahoney State Park.
- 90-404. Game and Parks Commission; additions to Arbor Lodge State Historical Park; purchase of property in the city of Bassett.
- 90-405. Repealed. Laws 2000, LB 1135, § 34.

**90-401 Game and Parks Commission; Red Willow and Strunk Lake State Recreation Areas; construct campgrounds and other recreation developments.**

The Game and Parks Commission is hereby authorized to construct campgrounds and other recreation developments at Red Willow State Recreation Area and Strunk Lake State Recreation Area pursuant to the 1978 Strunk Lake State Recreation Area and Red Willow State Recreation Area Development Program prepared by such commission.

**Source:** Laws 1978, LB 108, § 1.

**90-402 Game and Parks Commission; Rock Creek Fish Hatchery; modernize.**

The Game and Parks Commission is hereby authorized to modernize the Rock Creek Fish Hatchery pursuant to the 1974 Study of the Nebraska State Fish Hatchery System and Addendums prepared by such commission.

**Source:** Laws 1978, LB 586, § 1.

**90-403 Eugene T. Mahoney State Park.**

The land acquired by the Game and Parks Commission located in township 12 north, range 10 east of the sixth principal meridian, Cass County, is hereby named the Eugene T. Mahoney State Park.

**Source:** Laws 1985, LB 606A, § 1.

**90-404 Game and Parks Commission; additions to Arbor Lodge State Historical Park; purchase of property in the city of Bassett.**

(1) The Game and Parks Commission may enter into an agreement to accept as a gift from the Nebraska Game and Parks Foundation all of the real estate described as Lot 1 in the northwest quarter of the northwest quarter of section 8, township 8 north, range 14 east, Otoe County, Nebraska, except that part of Lot 1, commencing at the northwest corner of Lot 1, thence east 265 feet, thence south 462 feet, thence west 265 feet to a point on the west line of Lot 1, thence north 462 feet to the place of beginning, also described as the east

678.14 feet of Lot 1, all located in Otoe County, Nebraska, containing 7.1 acres more or less and including all gas, oil, and mineral rights.

(2) The Game and Parks Commission may enter into an agreement to accept as a gift from the United States Government all of the real estate described as a tract of land situated in the southwest quarter of section 8, township 8 north, range 14 east of the 6th principal meridian, Otoe County, Nebraska, more particularly described as follows: Commencing at the northeast corner of said southwest quarter of section 8; thence west 990.00 feet; thence south to a point that intersects the north right-of-way line of State Highway No. 2, said intersection being the point of beginning; thence easterly along said north right-of-way line of State Highway No. 2, for a distance of 200 feet; thence north 400 feet; thence west 200 feet; thence south to the point of beginning, all located in Otoe County, Nebraska, containing 1.84 acres, more or less, or 80,000 square feet.

(3) In consideration of such conveyances, the commission agrees that the land shall be designated and utilized as additions to Arbor Lodge State Historical Park.

(4) The Game and Parks Commission may purchase from a willing seller, when funds on hand are sufficient, or acquire by gift, devise, or otherwise title in the name of the State of Nebraska to property within Block 27, Pierce's Addition, and adjacent previous railroad right-of-way, all located within the city of Bassett, Nebraska.

**Source:** Laws 1993, LB 235, § 47; Laws 2000, LB 1410, § 3; Laws 2006, LB 792, § 1.

**90-405 Repealed. Laws 2000, LB 1135, § 34.**

**ARTICLE 5  
APPROPRIATIONS**

Section	
90-501.	Repealed. Laws 1992, LB 867, § 1.
90-502.	Repealed. Laws 1992, LB 867, § 1.
90-503.	Repealed. Laws 1999, LB 12, § 1.
90-504.	Repealed. Laws 1999, LB 12, § 1.
90-505.	Repealed. Laws 1999, LB 12, § 1.
90-506.	Repealed. Laws 1999, LB 12, § 1.
90-507.	Repealed. Laws 1999, LB 12, § 1.
90-508.	Repealed. Laws 1999, LB 12, § 1.
90-509.	Repealed. Laws 1999, LB 12, § 1.
90-510.	Repealed. Laws 1999, LB 12, § 1.
90-511.	Repealed. Laws 1999, LB 12, § 1.
90-512.	Repealed. Laws 1999, LB 12, § 1.
90-513.	Repealed. Laws 1999, LB 12, § 1.
90-514.	Repealed. Laws 1999, LB 12, § 1.
90-515.	Repealed. Laws 1999, LB 12, § 1.
90-516.	Repealed. Laws 1999, LB 12, § 1.
90-517.	Repealed. Laws 1999, LB 12, § 1.
90-518.	Repealed. Laws 1999, LB 12, § 1.
90-519.	Repealed. Laws 1999, LB 12, § 1.
90-520.	Repealed. Laws 1999, LB 12, § 1.
90-521.	Repealed. Laws 1999, LB 12, § 1.
90-522.	Repealed. Laws 1999, LB 12, § 1.
90-523.	Repealed. Laws 1999, LB 12, § 1.
90-524.	Repealed. Laws 1999, LB 12, § 1.

APPROPRIATIONS

§ 90-524

Section

- 90-525. Repealed. Laws 1999, LB 12, § 1.
- 90-526. Department of Economic Development.
- 90-527. Repealed. Laws 2005, LB 90, § 21.
- 90-528. Repealed. Laws 2007, LB 2, § 1.
- 90-529. Repealed. Laws 2007, LB 2, § 1.
- 90-530. Repealed. Laws 2007, LB 2, § 1.
- 90-531. Nebraska Arts Council.
- 90-532. Department of Economic Development; Administration.
- 90-533. Department of Economic Development; Industrial Recruitment.
- 90-534. Department of Economic Development; Tourism Promotion.

**90-501 Repealed. Laws 1992, LB 867, § 1.**

**90-502 Repealed. Laws 1992, LB 867, § 1.**

**90-503 Repealed. Laws 1999, LB 12, § 1.**

**90-504 Repealed. Laws 1999, LB 12, § 1.**

**90-505 Repealed. Laws 1999, LB 12, § 1.**

**90-506 Repealed. Laws 1999, LB 12, § 1.**

**90-507 Repealed. Laws 1999, LB 12, § 1.**

**90-508 Repealed. Laws 1999, LB 12, § 1.**

**90-509 Repealed. Laws 1999, LB 12, § 1.**

**90-510 Repealed. Laws 1999, LB 12, § 1.**

**90-511 Repealed. Laws 1999, LB 12, § 1.**

**90-512 Repealed. Laws 1999, LB 12, § 1.**

**90-513 Repealed. Laws 1999, LB 12, § 1.**

**90-514 Repealed. Laws 1999, LB 12, § 1.**

**90-515 Repealed. Laws 1999, LB 12, § 1.**

**90-516 Repealed. Laws 1999, LB 12, § 1.**

**90-517 Repealed. Laws 1999, LB 12, § 1.**

**90-518 Repealed. Laws 1999, LB 12, § 1.**

**90-519 Repealed. Laws 1999, LB 12, § 1.**

**90-520 Repealed. Laws 1999, LB 12, § 1.**

**90-521 Repealed. Laws 1999, LB 12, § 1.**

**90-522 Repealed. Laws 1999, LB 12, § 1.**

**90-523 Repealed. Laws 1999, LB 12, § 1.**

**90-524 Repealed. Laws 1999, LB 12, § 1.**

**90-525 Repealed. Laws 1999, LB 12, § 1.**

**90-526 Department of Economic Development.**

AGENCY NO. 72 — DEPARTMENT OF ECONOMIC DEVELOPMENT

Program No. 600 - Administration

	FY1997-98	FY1998-99
GENERAL FUND	1,992,404	1,787,058
CASH FUND	290,918	263,329
FEDERAL FUND est.	164,434	27,927
PROGRAM TOTAL	2,447,756	2,078,314
SALARY LIMIT	1,062,534	825,905

The unexpended Cash Fund balance existing in this program on June 30, 1997, is hereby reappropriated.

There is included in the appropriation to this program for FY1997-98 \$500,000 General Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY1998-99 \$500,000 General Funds for state aid, which shall only be used for such purpose.

**Source:** Laws 1998, LB 1053A, § 1; Laws 1998, LB 1108, § 143.

**90-527 Repealed. Laws 2005, LB 90, § 21.**

**90-528 Repealed. Laws 2007, LB 2, § 1.**

**90-529 Repealed. Laws 2007, LB 2, § 1.**

**90-530 Repealed. Laws 2007, LB 2, § 1.**

**90-531 Nebraska Arts Council.**

AGENCY NO. 69 — NEBRASKA ARTS COUNCIL

Program No. 326 - Promotion and Development of the Arts

	FY2007-08	FY2008-09
GENERAL FUND	608,750	618,060
CASH FUND	10,000	10,000
FEDERAL FUND est.	128,107	128,444
PROGRAM TOTAL	746,857	756,504
SALARY LIMIT	423,668	434,088

It is the intent of the Legislature that the Nebraska Arts Council work with the office of the Chief Information Officer to review and analyze the information technology and communication requirements of the agency and to determine the most efficient and cost-effective methods to manage information and provide services to constituent groups.

**Source:** Laws 2007, LB321, § 230; Laws 2008, LB959, § 85; Laws 2008, LB960, § 185.  
Effective date April 3, 2008.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 959, section 85, with LB 960, section 185, to reflect all amendments.

**90-532 Department of Economic Development; Administration.**

AGENCY NO. 72 — DEPARTMENT OF ECONOMIC DEVELOPMENT

**APPROPRIATIONS**

**§ 90-534**

Program No. 600 - Administration

	FY2007-08	FY2008-09
GENERAL FUND	1,279,662	1,315,967
CASH FUND	286,626	286,103
FEDERAL FUND est.	146,169	145,736
PROGRAM TOTAL	1,712,457	1,747,806
SALARY LIMIT	933,061	957,627

There is included in the appropriation to this program for FY2007-08 \$113,850 General Funds and \$15,000 Cash Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2008-09 \$100,000 General Funds and \$15,000 Cash Funds for state aid, which shall only be used for such purpose.

**Source:** Laws 2007, LB321, § 236; Laws 2008, LB959, § 86; Laws 2008, LB960, § 186.  
Effective date April 3, 2008.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 959, section 86, with LB 960, section 186, to reflect all amendments.

**90-533 Department of Economic Development; Industrial Recruitment.**

AGENCY NO. 72 — DEPARTMENT OF ECONOMIC DEVELOPMENT

Program No. 603 - Industrial Recruitment

	FY2007-08	FY2008-09
GENERAL FUND	2,872,989	2,831,365
CASH FUND	6,490,163	6,490,196
FEDERAL FUND est.	325,515	325,515
PROGRAM TOTAL	9,688,667	9,647,076
SALARY LIMIT	1,459,046	1,487,151

The unexpended Cash Fund appropriation balance existing on June 30, 2007, is hereby reappropriated.

There is included in the appropriation to this program for FY2007-08 \$377,500 General Funds, \$6,357,944 Cash Funds, and \$249,341 Federal Funds estimate for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2008-09 \$277,500 General Funds, \$6,357,944 Cash Funds, and \$249,341 Federal Funds estimate for state aid, which shall only be used for such purpose.

**Source:** Laws 2007, LB321, § 238; Laws 2008, LB959, § 87; Laws 2008, LB960, § 188.  
Effective date April 3, 2008.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 959, section 87, with LB 960, section 188, to reflect all amendments.

**90-534 Department of Economic Development; Tourism Promotion.**

AGENCY NO. 72 — DEPARTMENT OF ECONOMIC DEVELOPMENT

Program No. 618 - Tourism Promotion

	FY2007-08	FY2008-09
GENERAL FUND	500,000	500,000
CASH FUND	3,620,116	3,426,571
FEDERAL FUND est.	959,815	959,815
PROGRAM TOTAL	5,079,931	4,886,386
SALARY LIMIT	718,395	759,675

There is included in the appropriation to this program for FY2007-08 \$500,000 General Funds and \$108,000 Cash Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2008-09 \$500,000 General Funds and \$108,000 Cash Funds for state aid, which shall only be used for such purpose.

The General Fund state aid appropriation to this program shall be used to provide a system of dollar-for-dollar matching grants to area or regional promotional groups for advertising, marketing, and promotional efforts.

There is included in the appropriation to this program \$250,000 Cash Funds for FY2007-08 to provide funding for promotional and visitor development activities related to the hosting of an Olympic Team Trial event by a city of the metropolitan class.

**Source:** Laws 2007, LB321, § 239; Laws 2008, LB959, § 88; Laws 2008, LB960, § 189.

Effective date April 3, 2008.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 959, section 88, with LB 960, section 189, to reflect all amendments.