

E AND R AMENDMENTS TO LB 846

Introduced by Enrollment and Review Committee: McGill, 26,
Chairperson

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

3 Section 1. Section 39-2215, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 39-2215 (1) There is hereby created in the state treasury
6 a special fund to be known as the Highway Trust Fund.

7 (2) All funds credited to the Highway Trust Fund pursuant
8 to sections 66-4,140, 66-4,147, and 66-6,108 and sections 10 and 16
9 of this act, and related penalties and interest, shall be allocated
10 as provided in such sections.

11 (3) All other motor vehicle fuel taxes, diesel fuel
12 taxes, compressed fuel taxes, and alternative fuel taxes related to
13 highway use retained by the state, all motor vehicle registration
14 fees retained by the state other than those fees credited to
15 the State Recreation Road Fund pursuant to subdivision (3) of
16 section 60-3,156, and other highway-user taxes imposed by state
17 law and allocated to the Highway Trust Fund, except for the
18 proceeds of the sales and use taxes derived from motor vehicles,
19 trailers, and semitrailers credited to the fund pursuant to section
20 77-27,132, are hereby irrevocably pledged for the terms of the
21 bonds issued prior to January 1, 1988, to the payment of the
22 principal, interest, and redemption premium, if any, of such bonds
23 as they mature and become due at maturity or prior redemption

1 and for any reserves therefor and shall, as received by the State
2 Treasurer, be deposited in the fund for such purpose.

3 (4) Of the money in the fund specified in subsection
4 (3) of this section which is not required for the use specified
5 in such subsection, (a) an amount equal to three dollars times
6 the number of motorcycles registered during the previous month
7 shall be placed in the Motorcycle Safety Education Fund, (b) an
8 amount to be determined annually by the Legislature through the
9 appropriations process may be transferred to the Motor Fuel Tax
10 Enforcement and Collection Cash Fund for use as provided in section
11 66-738 on a monthly or other less frequent basis as determined by
12 the appropriation language, (c) an amount to be determined annually
13 by the Legislature through the appropriations process shall be
14 transferred to the License Plate Cash Fund as certified by the
15 Director of Motor Vehicles, and (d) the remaining money may be
16 used for the purchase for retirement of the bonds issued prior to
17 January 1, 1988, in the open market.

18 (5) The State Treasurer shall monthly transfer, from the
19 proceeds of the sales and use taxes credited to the Highway Trust
20 Fund and any money remaining in the fund after the requirements of
21 subsections (2) through (4) of this section are satisfied, thirty
22 thousand dollars to the Grade Crossing Protection Fund.

23 (6) Except as provided in subsection (7) of this
24 section, the balance of the Highway Trust Fund shall be allocated
25 fifty-three and one-third percent, less the amount provided for
26 in section 39-847.01, to the Department of Roads, twenty-three
27 and one-third percent, less the amount provided for in section

1 39-847.01, to the various counties for road purposes, and
2 twenty-three and one-third percent to the various municipalities
3 for street purposes. If bonds are issued pursuant to subsection
4 (2) of section 39-2223, the portion allocated to the Department
5 of Roads shall be credited monthly to the Highway Restoration
6 and Improvement Bond Fund, and if no bonds are issued pursuant
7 to such subsection, the portion allocated to the department
8 shall be credited monthly to the Highway Cash Fund. The portions
9 allocated to the counties and municipalities shall be credited
10 monthly to the Highway Allocation Fund and distributed monthly as
11 provided by law. Vehicles accorded prorated registration pursuant
12 to section 60-3,198 shall not be included in any formula involving
13 motor vehicle registrations used to determine the allocation and
14 distribution of state funds for highway purposes to political
15 subdivisions.

16 (7) If it is determined by December 20 of any year that a
17 county will receive from its allocation of state-collected highway
18 revenue and from any funds relinquished to it by municipalities
19 within its boundaries an amount in such year which is less than
20 such county received in state-collected highway revenue in calendar
21 year 1969, based upon the 1976 tax rates for highway-user fuels and
22 registration fees, the Department of Roads shall notify the State
23 Treasurer that an amount equal to the sum necessary to provide such
24 county with funds equal to such county's 1969 highway allocation
25 for such year shall be transferred to such county from the Highway
26 Trust Fund. Such makeup funds shall be matched by the county as
27 provided in sections 39-2501 to 39-2510. The balance remaining in

1 the fund after such transfer shall then be reallocated as provided
2 in subsection (6) of this section.

3 (8) The State Treasurer shall disburse the money in the
4 Highway Trust Fund as directed by resolution of the commission.
5 All disbursements from the fund shall be made upon warrants drawn
6 by the Director of Administrative Services. Any money in the fund
7 available for investment shall be invested by the state investment
8 officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act and the earnings, if any,
10 credited to the fund.

11 Sec. 2. Section 66-482, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 66-482 For purposes of sections 66-482 to 66-4,149 and
14 section 10 of this act:

15 (1) Motor vehicle shall have the same definition as in
16 section 60-339;

17 (2) Motor vehicle fuel shall include all products and
18 fuel commonly or commercially known as gasoline, including casing
19 head or natural gasoline, and shall include any other liquid and
20 such other volatile and inflammable liquids as may be produced,
21 compounded, or used for the purpose of operating or propelling
22 motor vehicles, motorboats, or aircraft or as an ingredient in
23 the manufacture of such fuel. Agricultural ethyl alcohol produced
24 for use as a motor vehicle fuel shall be considered a motor
25 vehicle fuel. Motor vehicle fuel shall not include the products
26 commonly known as methanol, kerosene oil, kerosene distillate,
27 crude petroleum, naphtha, and benzine with a boiling point over

1 two hundred degrees Fahrenheit, residuum gas oil, smudge oil,
2 leaded automotive racing fuel with an American Society of Testing
3 Materials research method octane number in excess of one hundred
4 five, and any petroleum product with an initial boiling point under
5 two hundred degrees Fahrenheit, a ninety-five percent distillation
6 (recovery) temperature in excess of four hundred sixty-four degrees
7 Fahrenheit, an American Society of Testing Materials research
8 method octane number less than seventy, and an end or dry point of
9 distillation of five hundred seventy degrees Fahrenheit maximum;

10 (3) Agricultural ethyl alcohol shall mean ethyl alcohol
11 produced from cereal grains or agricultural commodities grown
12 within the continental United States and which is a finished
13 product that is a nominally anhydrous ethyl alcohol meeting
14 American Society for Testing and Materials D4806 standards. For
15 the purpose of sections 66-482 to 66-4,149 and section 10 of this
16 act, the purity of the ethyl alcohol shall be determined excluding
17 denaturant and the volume of alcohol blended with gasoline for
18 motor vehicle fuel shall include the volume of any denaturant
19 required pursuant to law;

20 (4) Alcohol blend shall mean a blend of agricultural
21 ethyl alcohol in gasoline or other motor vehicle fuel, such blend
22 to contain not less than five percent by volume of alcohol;

23 (5) Supplier shall mean any person who owns motor fuels
24 imported by barge, barge line, or pipeline and stored at a barge,
25 barge line, or pipeline terminal in this state;

26 (6) Distributor shall mean any person who acquires
27 ownership of motor fuels directly from a producer or supplier

1 at or from a barge, barge line, pipeline terminal, or ethanol or
2 biodiesel facility in this state;

3 (7) Wholesaler shall mean any person, other than a
4 producer, supplier, distributor, or importer, who acquires motor
5 fuels for resale;

6 (8) Retailer shall mean any person who acquires motor
7 fuels from a producer, supplier, distributor, wholesaler, or
8 importer for resale to consumers of such fuel;

9 (9) Importer shall mean any person who owns motor fuels
10 at the time such fuels enter the State of Nebraska by any means
11 other than barge, barge line, or pipeline. Importer shall not
12 include a person who imports motor fuels in a tank directly
13 connected to the engine of a motor vehicle, train, watercraft, or
14 airplane for purposes of providing fuel to the engine to which the
15 tank is connected;

16 (10) Exporter shall mean any person who acquires
17 ownership of motor fuels from any licensed producer, supplier,
18 distributor, wholesaler, or importer exclusively for use or resale
19 in another state;

20 (11) Gross gallons shall mean measured gallons without
21 adjustment or correction for temperature or barometric pressure;

22 (12) Diesel fuel shall mean all combustible liquids and
23 biodiesel which are suitable for the generation of power for
24 diesel-powered vehicles, except that diesel fuel shall not include
25 kerosene;

26 (13) Compressed fuel shall mean any fuel defined as
27 compressed fuel in section 66-6,100;

1 (14) Person shall mean any individual, firm, partnership,
2 limited liability company, company, agency, association,
3 corporation, state, county, municipality, or other political
4 subdivision. Whenever a fine or imprisonment is prescribed or
5 imposed in sections 66-482 to 66-4,149 and section 10 of this act,
6 the word person as applied to a partnership, a limited liability
7 company, or an association shall mean the partners or members
8 thereof;

9 (15) Department shall mean the Motor Fuel Tax Enforcement
10 and Collection Division of the Department of Revenue;

11 (16) Semiannual period shall mean either the period which
12 begins on January 1 and ends on June 30 of each year or the period
13 which begins on July 1 and ends on December 31 of each year;

14 (17) Producer shall mean any person who manufactures
15 agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel
16 facility in this state;

17 (18) Highway shall mean every way or place generally open
18 to the use of the public for the purpose of vehicular travel,
19 even though such way or place may be temporarily closed or travel
20 thereon restricted for the purpose of construction, maintenance,
21 repair, or reconstruction;

22 (19) Kerosene shall mean kerosene meeting the
23 specifications as found in the American Society for Testing and
24 Materials publication D3699 entitled Standard Specifications for
25 Kerosene;

26 (20) Biodiesel shall mean mono-alkyl esters of long
27 chain fatty acids derived from vegetable oils or animal fats

1 which conform to American Society for Testing and Materials D6751
2 specifications for use in diesel engines. Biodiesel refers to the
3 pure fuel before blending with diesel fuel;

4 (21) Motor fuels shall mean motor vehicle fuel, diesel
5 fuel, aircraft fuel, or compressed fuel;

6 (22) Ethanol facility shall mean a plant which produces
7 agricultural ethyl alcohol under the provisions described in
8 section 66-1344; and

9 (23) Biodiesel facility shall mean a plant which produces
10 biodiesel.

11 Sec. 3. Section 66-485, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 66-485 The department, for the first year of a new
14 license or whenever it deems it necessary to insure compliance with
15 sections 66-482 to 66-4,149 and section 10 of this act, may require
16 any producer, supplier, distributor, wholesaler, exporter, or
17 importer subject to such sections to place with the department such
18 security as it determines. The amount and duration of the security
19 shall be fixed by the department and shall be approximately three
20 times the total estimated average monthly tax liability payable
21 by such producer, supplier, distributor, wholesaler, or importer
22 pursuant to such sections. Such security shall consist of a surety
23 bond executed by a surety company duly licensed and authorized
24 to do business within this state in the amount specified by the
25 department. In the case of an exporter, the amount and duration
26 of the security shall be fixed by the department. Such security
27 shall run to the Department of Revenue and be conditioned upon the

1 payment of all taxes, interest, penalties, and costs for which such
2 producer, supplier, distributor, wholesaler, exporter, or importer
3 is liable, whether such liability was incurred prior to or after
4 such security is filed.

5 Sec. 4. Section 66-488, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 66-488 (1) Every producer, supplier, distributor,
8 wholesaler, importer, and exporter who engages in the sale,
9 distribution, delivery, and use of motor fuels shall render and
10 have on file with the department a return reporting the number
11 of gallons of motor fuels, based on gross gallons, received,
12 imported, or exported and unloaded and emptied or caused to
13 be received, imported, or exported and unloaded and emptied by
14 such producer, supplier, distributor, wholesaler, or importer in
15 the State of Nebraska and the number of gallons of motor fuels
16 produced, refined, manufactured, blended, or compounded by such
17 producer, supplier, distributor, wholesaler, or importer within
18 the State of Nebraska, during the preceding reporting period, and
19 defining the nature of such motor fuels. The return shall also
20 show such information as the department reasonably requires for
21 the proper administration and enforcement of sections 66-482 to
22 66-4,149 and section 10 of this act. The return shall contain a
23 declaration, by the person making the same, to the effect that the
24 statements contained therein are true and are made under penalties
25 of perjury, which declaration shall have the same force and effect
26 as a verification of the return and shall be in lieu of such
27 verification. The return shall be signed by the producer, supplier,

1 distributor, wholesaler, importer, or exporter or a principal
2 officer, general agent, managing agent, attorney in fact, chief
3 accountant, or other responsible representative of the producer,
4 supplier, distributor, wholesaler, importer, or exporter, and such
5 return shall be entitled to be received in evidence in all courts
6 of this state and shall be prima facie evidence of the facts
7 therein stated. The producer, supplier, distributor, wholesaler,
8 importer, or exporter shall file the return in such format as
9 prescribed by the department on or before the twenty-fifth day of
10 the next succeeding calendar month following the reporting period
11 to which it relates. If the final filing date for such return
12 falls on a Saturday, Sunday, or legal holiday, the next secular
13 or business day shall be the final filing date. The return shall
14 be considered filed on time if transmitted or postmarked before
15 midnight of the final filing date.

16 (2) For purposes of this section, reporting period means
17 calendar month unless otherwise provided by rules and regulations
18 of the department, but under no circumstance shall such reporting
19 period extend beyond an annual basis.

20 Sec. 5. Section 66-489, Revised Statutes Supplement,
21 2007, is amended to read:

22 66-489 (1) At the time of filing the return required by
23 section 66-488, such producer, supplier, distributor, wholesaler,
24 or importer shall, in addition to the tax imposed pursuant to
25 sections 66-4,140, 66-4,145, and 66-4,146 and section 10 of this
26 act and in addition to the other taxes provided for by law, pay a
27 tax of ~~ten~~ two and one-half cents per gallon upon all motor fuels

1 as shown by such return, except that there shall be no tax on the
2 motor fuels reported if (a) the required taxes on the motor fuels
3 have been paid, (b) the motor fuels have been sold to a licensed
4 exporter exclusively for resale or use in another state, (c) the
5 motor fuels have been sold from a Nebraska barge line terminal,
6 pipeline terminal, refinery, or ethanol or biodiesel facility,
7 including motor fuels stored offsite in bulk, by a licensed
8 producer or supplier to a licensed distributor, (d) the motor fuels
9 have been sold by a licensed distributor or licensed importer to
10 a licensed distributor or to a licensed wholesaler and the seller
11 acquired ownership of the motor fuels directly from a licensed
12 producer or supplier at or from a refinery, barge, barge line,
13 pipeline terminal, or ethanol or biodiesel facility, including
14 motor fuels stored offsite in bulk, in this state or was the first
15 importer of such fuel into this state, or (e) as otherwise provided
16 in this section. Such producer, supplier, distributor, wholesaler,
17 or importer shall remit such tax to the department.

18 (2) As part of filing the return required by section
19 66-488, each producer of ethanol shall, in addition to other
20 taxes imposed by the motor fuel laws, pay an excise tax of one
21 and one-quarter cents per gallon through December 31, 2004, and
22 commencing January 1, 2010, and two and one-half cents per gallon
23 commencing January 1, 2005, through December 31, 2009, on natural
24 gasoline purchased for use as a denaturant by the producer at
25 an ethanol facility. All taxes, interest, and penalties collected
26 under this subsection shall be remitted to the State Treasurer
27 for credit to the Agricultural Alcohol Fuel Tax Fund, except that

1 commencing January 1, 2005, through December 31, 2009, one and
2 one-quarter cents per gallon of such excise tax shall be credited
3 to the Ethanol Production Incentive Cash Fund. For fiscal years
4 2007-08 through 2011-12, if the total receipts from the excise
5 tax authorized in this subsection and designated for deposit in
6 the Agricultural Alcohol Fuel Tax Fund exceed five hundred fifty
7 thousand dollars, the State Treasurer shall deposit amounts in
8 excess of five hundred fifty thousand dollars in the Ethanol
9 Production Incentive Cash Fund.

10 (3) (a) Motor fuels, methanol, and all blending agents
11 or fuel expanders shall be exempt from the taxes imposed by this
12 section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and
13 section 10 of this act, when the fuels are used for buses equipped
14 to carry more than seven persons for hire and engaged entirely in
15 the transportation of passengers for hire within municipalities or
16 within a radius of six miles thereof.

17 (b) The owner or agent of any bus equipped to carry
18 more than seven persons for hire and engaged entirely in the
19 transportation of passengers for hire within municipalities, or
20 within a radius of six miles thereof, in lieu of the excise tax
21 provided for in this section, shall pay an equalization fee of a
22 sum equal to twice the amount of the registration fee applicable to
23 such vehicle under the laws of this state. Such equalization fee
24 shall be paid in the same manner as the registration fee and be
25 disbursed and allocated as registration fees.

26 (c) Nothing in this section shall be construed as
27 permitting motor fuels to be sold tax exempt. The department

1 shall refund tax paid on motor fuels used in buses deemed exempt by
2 this section.

3 (4) Natural gasoline purchased for use as a denaturant
4 by a producer at an ethanol facility as defined in section 66-1333
5 shall be exempt from the motor fuels tax imposed by subsection (1)
6 of this section as well as the tax imposed pursuant to sections
7 66-4,140, 66-4,145, and 66-4,146 and section 10 of this act.

8 (5) Unless otherwise provided by an agreement entered
9 into between the State of Nebraska and the governing body of any
10 federally recognized Indian tribe within the State of Nebraska,
11 motor fuels purchased on a Nebraska Indian reservation where the
12 purchaser is a Native American who resides on the reservation shall
13 be exempt from the motor fuels tax imposed by this section as well
14 as the tax imposed pursuant to sections 66-4,140, 66-4,145, and
15 66-4,146 and section 10 of this act.

16 (6) Motor fuels purchased for use by the United States
17 Government or its agencies shall be exempt from the motor fuels
18 tax imposed by this section as well as the tax imposed pursuant to
19 sections 66-4,140, 66-4,145, and 66-4,146 and section 10 of this
20 act.

21 (7) In the case of diesel fuel, there shall be no tax on
22 the motor fuels reported if (a) the diesel fuel has been indelibly
23 dyed and chemically marked in accordance with regulations issued by
24 the Secretary of the Treasury of the United States under 26 U.S.C.
25 4082 or (b) the diesel fuel contains a concentration of sulphur
26 in excess of five-hundredths percent by weight or fails to meet
27 a cetane index minimum of forty and has been indelibly dyed in

1 accordance with regulations promulgated by the Administrator of the
2 Environmental Protection Agency pursuant to 42 U.S.C. 7545.

3 (8) The changes made to this section by this legislative
4 bill apply for tax periods beginning on and after January 1, 2009.

5 Sec. 6. Section 66-489.01, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 66-489.01 Methanol, benzine, benzol, naphtha, kerosene,
8 and any other volatile, flammable, or combustible liquid suitable
9 for use as a motor fuels blending agent or fuel expander shall
10 be exempt from the taxes imposed under sections 66-489, 66-4,105,
11 66-4,140, 66-4,145, and 66-4,146 and section 10 of this act unless
12 and until such methanol, benzine, benzol, naphtha, kerosene, or
13 other blending agent or fuel expander is blended with motor fuels
14 or placed directly into the supply tank of a licensed motor
15 vehicle. Any person blending such products with motor fuels or
16 placing such products into the supply tank of a licensed motor
17 vehicle shall pay the taxes imposed under such sections directly
18 to the department on forms provided by the department at the same
19 time as the motor fuels with which it is blended become subject
20 to taxation or, if the tax imposed on the motor fuels has already
21 been paid, upon blending. The taxes imposed by this section shall
22 not apply to fuel additives which are used to enhance engine
23 performance or prevent fuel line freezing or clogging when placed
24 directly into the supply tank of a motor vehicle in quantities of
25 one quart or less.

26 Sec. 7. Section 66-495.01, Revised Statutes Cumulative
27 Supplement, 2006, is amended to read:

1 66-495.01 (1) Except as provided in subsection (5) of
2 this section, the fuel supply tank of a motor vehicle registered
3 or required to be registered for operation on the highway shall
4 not contain or be used with undyed diesel fuel that has not been
5 taxed or diesel fuel which contains any evidence of the dye or
6 chemical marker added pursuant to the regulations promulgated under
7 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or
8 high-sulphur diesel fuel.

9 (2) No retailer of diesel fuel shall sell or offer
10 to sell diesel fuel that contains any evidence of the dye or
11 chemical marker added pursuant to the regulations promulgated under
12 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur
13 or high-sulphur diesel fuel unless the fuel dispensing device is
14 clearly marked with a notice that the fuel is dyed or chemically
15 marked.

16 (3) Any law enforcement officer, any carrier enforcement
17 officer, or any agent of the department who has reasonable grounds
18 to suspect a violation of this section may inspect the fuel in
19 the fuel supply tank of any motor vehicle or the fuel storage
20 facilities and dispensing devices of any diesel fuel retailer
21 to determine compliance with this section. Fuel inspections may
22 also be conducted in the course of safety or other inspections
23 authorized by law.

24 (4) Any person who violates any provision of this section
25 or who refuses to permit an inspection authorized by this section
26 shall be guilty of a Class IV misdemeanor and shall be subject
27 to an administrative penalty of two hundred fifty dollars for the

1 first such violation. If the person had another violation under
2 this section within the last five years, the person shall be
3 subject to an administrative penalty of one thousand dollars for
4 the current violation. If the person had two or more violations
5 under this section within the last five years, the person shall be
6 subject to an administrative penalty of two thousand five hundred
7 dollars for the current violation. All such penalties shall be
8 assessed against the owner of the vehicle as of the date of the
9 violation. The penalty shall be assessed and collected by the
10 department. All such penalties collected shall be remitted to the
11 State Treasurer for credit to the Highway Trust Fund.

12 (5) Any motor vehicle owned or leased by any state,
13 county, municipality, or other political subdivision may be
14 operated on the highways of this state with dyed diesel fuel,
15 except high-sulphur diesel fuel dyed in accordance with regulations
16 promulgated by the Administrator of the Environmental Protection
17 Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by sections
18 66-482 to 66-4,149 and section 10 of this act are paid to the
19 department by the state, county, municipality, or other political
20 subdivision. The state, county, municipality, or other political
21 subdivision shall pay the tax and file a return concerning the tax
22 to the department in like manner and form as is required under
23 sections 66-4,105 and 66-4,106 and section 10 of this act.

24 (6) For purposes of this section:

25 (a) Owner means registered owner, titleholder, lessee
26 entitled to possession of the motor vehicle, or anyone otherwise
27 maintaining a possessory interest in the motor vehicle, but does

1 not include anyone who, without participating in the use or
2 operation of the motor vehicle and otherwise not engaged in the
3 purpose for which the motor vehicle is being used, holds indicia
4 of ownership primarily to protect his or her security interest in
5 the motor vehicle or who acquired ownership of the motor vehicle
6 pursuant to a foreclosure of a security interest in the motor
7 vehicle; and

8 (b) Use means to operate, fuel, or otherwise employ.

9 Sec. 8. Section 66-4,103, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 66-4,103 The provisions of sections 66-482 to 66-4,103
12 and section 10 of this act shall not apply or be construed to apply
13 to foreign or interstate commerce, except insofar as the same may
14 be permitted under the provisions of the Constitution and laws of
15 the United States.

16 Sec. 9. Section 66-4,105, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 66-4,105 There is hereby levied and imposed an excise
19 tax of ~~ten~~ two and one-half cents per gallon, increased by the
20 amounts imposed or determined under sections 66-4,140, 66-4,145,
21 and 66-4,146 and section 10 of this act, upon the use of all
22 motor fuels used in this state and due the State of Nebraska under
23 section 66-489. Users of motor fuels subject to taxation under
24 this section shall be allowed the same exemptions, deductions,
25 and rights of reimbursement as are authorized and permitted by
26 Chapter 66, article 4, other than any commissions provided under
27 such article. For purposes of this section and section 66-4,106,

1 use shall mean the purchase or consumption of motor fuels in this
2 state. The changes made to this section by this legislative bill
3 apply for tax periods beginning on and after January 1, 2009.

4 Sec. 10. (1) For tax periods beginning on and after
5 January 1, 2009, at the time of filing the return required by
6 section 66-488, the producer, supplier, distributor, wholesaler, or
7 importer shall, in addition to the other taxes provided for by law,
8 pay a tax at the rate of five percent of the average wholesale
9 price of gasoline for the gallons of the motor fuels as shown
10 by the return, except that there shall be no tax on the motor
11 fuels reported if they are otherwise exempted by sections 66-482 to
12 66-4,149.

13 (2) The department shall calculate the average wholesale
14 price of gasoline on October 1, 2008, and on each April 1 and
15 October 1 thereafter. The average wholesale price on April 1 shall
16 apply to returns for the tax periods beginning on and after July
17 1, and the average wholesale price on October 1 shall apply to
18 returns for the tax periods beginning on and after January 1. The
19 average wholesale price shall be determined using data available
20 from the Energy Information Administration of the United States
21 Department of Energy and shall be a single, statewide average
22 wholesale price per gallon of gasoline sold in the state over the
23 previous six-month period, excluding any state or federal excise
24 tax or environmental fees. The change in the average wholesale
25 price between two six-month periods shall not exceed an increase or
26 decrease of twenty-five percent.

27 (3) All sums of money received under this section shall

1 be credited to the Highway Trust Fund. Credits and refunds of such
2 tax allowed to producers, suppliers, distributors, wholesalers, or
3 importers shall be paid from the Highway Trust Fund. The balance of
4 the amount credited, after credits and refunds, shall be allocated
5 as follows:

6 (a) Sixty-six percent to the Highway Cash Fund for the
7 Department of Roads;

8 (b) Seventeen percent to the Highway Allocation Fund for
9 allocation to the various counties for road purposes; and

10 (c) Seventeen percent to the Highway Allocation Fund for
11 allocation to the various municipalities for street purposes.

12 Sec. 11. Section 66-4,114, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 66-4,114 Motor fuels in the supply tank of any qualified
15 motor vehicle as defined in section 66-1416 which is regularly
16 connected with the carburetor of the engine of any such vehicle and
17 which is brought into this state shall be liable for the payment
18 of the tax imposed by this state upon motor fuels under sections
19 66-489 and 66-4,105 and section 10 of this act except when a trip
20 permit is used as provided in the International Fuel Tax Agreement
21 Act.

22 Sec. 12. Section 66-4,145, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 66-4,145 In addition to the tax imposed by sections
25 66-489 and 66-4,140 and section 10 of this act, each producer,
26 supplier, distributor, wholesaler, and importer required by section
27 66-489 to pay motor fuels taxes shall pay an excise tax of two

1 cents per gallon on all motor fuels received, imported, produced,
2 refined, manufactured, blended, or compounded by such producer,
3 supplier, distributor, wholesaler, or importer within the State of
4 Nebraska.

5 Sec. 13. Section 66-4,146, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 66-4,146 In addition to the tax imposed by sections
8 66-489, 66-4,140, and 66-4,145 and section 10 of this act, each
9 producer, supplier, distributor, wholesaler, and importer required
10 by section 66-489 to pay motor fuels taxes shall pay an excise tax
11 of two cents per gallon on all motor fuels used in the State of
12 Nebraska.

13 Sec. 14. Section 66-697, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 66-697 Sections 66-697 to 66-6,116 and section 16 of this
16 act shall be known and may be cited as the Compressed Fuel Tax Act.

17 Sec. 15. Section 66-6,107, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 66-6,107 In addition to the tax imposed pursuant to
20 sections 66-6,108 and 66-6,109 and section 16 of this act, an
21 excise tax of ~~ten~~ two and one-half cents per gallon or gallon
22 equivalent is levied and imposed on all compressed fuel sold for
23 use in registered motor vehicles. The changes made to this section
24 by this legislative bill apply for tax periods beginning on and
25 after January 1, 2009.

26 Sec. 16. (1) For tax periods beginning on and after
27 January 1, 2009, at the time of filing the return required by

1 section 66-6,110, the retailer shall, in addition to the other
2 taxes provided for by law, pay a tax at the rate of five percent
3 of the average wholesale price of gasoline calculated pursuant to
4 section 10 of this act for the gallons of the compressed fuel
5 as shown by the return, except that there shall be no tax on
6 the compressed fuel reported if it is otherwise exempted by the
7 Compressed Fuel Tax Act.

8 (2) All sums of money received under this section shall
9 be credited to the Highway Trust Fund. Credits and refunds of such
10 tax allowed to producers, suppliers, distributors, wholesalers, or
11 importers shall be paid from the Highway Trust Fund. The balance of
12 the amount credited, after credits and refunds, shall be allocated
13 as follows:

14 (a) Sixty-six percent to the Highway Cash Fund for the
15 Department of Roads;

16 (b) Seventeen percent to the Highway Allocation Fund for
17 allocation to the various counties for road purposes; and

18 (c) Seventeen percent to the Highway Allocation Fund for
19 allocation to the various municipalities for street purposes.

20 Sec. 17. Section 66-6,109, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 66-6,109 In addition to the tax imposed by sections
23 66-6,107 and 66-6,108 and section 16 of this act, each retailer
24 shall pay an excise tax of two cents per gallon or gallon
25 equivalent on all compressed fuel sold for use in registered motor
26 vehicles.

27 Sec. 18. Section 66-6,111, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 66-6,111 ~~The tax imposed by the Compressed Fuel Tax Act~~
3 taxes imposed by sections 66-6,107, 66-6,108, and 66-6,109 shall be
4 computed by each retailer by multiplying the tax rate established
5 in sections 66-6,107, 66-6,108, and 66-6,109 by the number of
6 gallons or gallon equivalents of compressed fuel sold for use in
7 registered motor vehicles.

8 Sec. 19. Section 66-726, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 66-726 (1) The department may adjust all errors in
11 payment, refund tax paid on motor fuel destroyed, refund tax
12 overpaid on motor fuel, and refund an amount equal to the
13 per-gallon tax imposed by this state on sales of motor fuel
14 on which tax was paid in this state but which was sold in a state
15 other than Nebraska.

16 (2) (a) Motor fuels shall be exempt from the taxes imposed
17 by sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 and
18 section 10 of this act when the fuels are used for agricultural,
19 quarrying, industrial, or other nonhighway use.

20 (b) The department shall refund tax paid on motor fuels
21 used for an exempt purpose. The purchaser of tax-paid motor fuels
22 used for an exempt purpose shall file a claim for refund with the
23 department on forms prescribed by the department and shall provide
24 such documentation and maintain such records as the department
25 reasonably requires to substantiate that the fuels were used for
26 exempt purposes.

27 (c) The refund claim shall include: (i) The name

1 of claimant; (ii) the make, horsepower, and other mechanical
2 description of machinery in which the motor fuels were used; (iii)
3 a statement as to the source or place of business where such
4 motor fuels, used solely for agricultural, quarrying, industrial,
5 or other nonhighway uses, were acquired; that no part of such motor
6 fuels were used in propelling licensed motor vehicles; and that
7 the motor fuels for which refund of the tax thereon is claimed
8 were used solely for agricultural, quarrying, industrial, or other
9 nonhighway uses; and (iv) any other information deemed necessary by
10 the department.

11 (d) The department shall deduct (i) from each claim for
12 refund of tax paid on purchases of motor vehicle fuels under this
13 subsection two and one-quarter cents per gallon through December
14 31, 2004, and commencing January 1, 2010, and three and one-half
15 cents per gallon commencing January 1, 2005, through December 31,
16 2009, of the tax paid and (ii) from each claim for refund of tax
17 paid on purchases of diesel fuel under this subsection one cent per
18 gallon of the tax paid.

19 (e) The department shall transmit monthly to the State
20 Treasurer a report of the number of gallons of motor vehicle fuel
21 for which refunds have been approved under this subsection. Through
22 December 31, 2004, and commencing January 1, 2010, the State
23 Treasurer shall thereupon transfer from the Highway Trust Fund to
24 the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents
25 per gallon approved for refund, and commencing January 1, 2005,
26 through December 31, 2009, the State Treasurer shall thereupon
27 transfer from the Highway Trust Fund (a) to the Ethanol Production

1 Incentive Cash Fund one and one-quarter cents per gallon approved
2 for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one
3 and one-quarter cents per gallon approved for refund.

4 (3) No refund shall be allowed unless a claim is filed
5 setting forth the circumstances by reason of which refund should be
6 allowed. Such claim shall be filed with the department within three
7 years from the date of the payment of the tax.

8 (4) In each calendar year, no claim for refund related to
9 motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel
10 can be for an amount less than twenty-five dollars.

11 (5) The department shall administer and enforce this
12 section. The department may call to its aid when necessary any
13 member of the Nebraska State Patrol, any police officer, any county
14 attorney, or the Attorney General. The employees of the department
15 are empowered to stop and inspect motor vehicles, to inspect
16 premises, and temporarily to impound motor vehicles or motor fuels
17 when necessary to administer this section.

18 (6) The department may adopt and promulgate such rules
19 and regulations as are necessary for the prompt and effective
20 enforcement of this section.

21 (7) Any claimant for refund of motor fuels tax under this
22 section who is unable to produce the original copy of any invoice
23 to substantiate the refund for the reason that the same has been
24 lost, mutilated, or destroyed may make proof of his or her claim
25 by affidavit and such other evidence as may be required by the
26 department, and if such claim is verified by investigation, such
27 claim may be allowed.

1 (8) The changes made to this section by Laws 2004, LB
2 983, apply to motor fuels purchased during any tax year ending
3 or deemed to end on or after January 1, 2005, under the Internal
4 Revenue Code.

5 Sec. 20. Sections 5, 9, 15, and 21 of this act become
6 operative on January 1, 2009. The other sections of this act become
7 operative on their effective date.

8 Sec. 21. Original sections 66-4,105 and 66-6,107, Revised
9 Statutes Cumulative Supplement, 2006, and section 66-489, Revised
10 Statutes Supplement, 2007, are repealed.

11 Sec. 22. Original sections 66-4,103, 66-697, and
12 66-6,109, Reissue Revised Statutes of Nebraska, and sections
13 39-2215, 66-482, 66-485, 66-488, 66-489.01, 66-495.01, 66-4,114,
14 66-4,145, 66-4,146, 66-6,111, and 66-726, Revised Statutes
15 Cumulative Supplement, 2006, are repealed.

16 2. On page 1, line 9, after the semicolon insert "to
17 provide operative dates;".